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THE  
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DEVOTED TO REPORTS OF

DECISIONS OF THE COURTS AND DEPARTMENTS

AT THE NATIONAL CAPITAL.

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GEO. B. CORKHILL, Editor.

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# Washington Law Reporter

WASHINGTON - - - - - January 6, 1883

GEORGE B. CORKHILL - - - EDITOR

## Right of a Married Woman to Engage in Business— Her Right to Exemptions.

The right of a married woman to engage in business in the District of Columbia, has not as yet, we believe been judicially considered.

The provisions of the Revised Statutes of the United States relating to the District secure her the full power of disposal over her separate estate, and she may contract in all matters relating thereto in the same manner as if she were unmarried: having a separate estate, obtained otherwise than by gift or conveyance from her husband, it is competent for her to change its character, at her pleasure—if it is in money she may purchase merchantable commodities with it, which she may in turn sell and dispose of, for money or any other kind of property, and there is no restriction upon her right to do this as often as she may desire.

It follows clearly that notwithstanding her disabilities in the matter of general contracts she may substantially engage in business, where the business consists simply in buying goods and making sales of the property purchased. If the business has no further extent than this, it does not seem to be open to any valid legal objection.

The profits arising from a single or any number of transactions of this kind could not properly be considered as "her earnings" to which the husband or his creditors would be entitled under the decision in the case of *Mitchell v. Seitz*, 4 Otto, 580.

But may she not proceed further? Has not the law by investing her with an absolute dominion over her separate estate, necessarily clothed her with all the powers incident to such ownership, and can she not do and perform any and all such things as in her judgment may be necessary for its preservation, betterment and increase in value? Owning suitable materials, may she not convert them into head dresses, hats, bonnets, or

other articles of millinery, &c.? And having done so does her estate become less indefeasible than before, because she has availed herself wholly or in part of her own labor, in effecting the change?

These considerations are suggested by an article in the *New Jersey Law Journal* (Dec., 1882,) upon a case which has arisen in that State, involving the right of a married woman who was engaged in business and was supporting the husband and the family (the husband being incapable of taking care of them from physical infirmity) to claim the benefit of the act providing for certain exemptions in favor of a "debtor having a family."

Her right under the laws of the State to engage in the business does not seem to be questioned.

The following extract which we make from the article contains a useful collocation of authorities bearing upon the meaning of the terms "family" and "head of a family" as used in exemption laws.

"The word family in statutes like this has never been construed to mean only those persons whom the debtor was bound to support, and it has often been held that relatives who lived with the debtor, and were in fact dependent upon him, were members of his family. The courts generally construe the statute liberally in view of the remedial character of the act and the humane object of such a law. *Gregory v. Latchen*, 53 Ind., 449; *Buxton v. Dearborn*, 46 N. H., 43; *Wassel v. Tunnah*, 25 Ark., 103; *True v. Morrill*, 28 Vt., 674; *Mills v. Grant*, 36 Vt., 271; *Campbell v. Adair*, 45 Miss., 182; *Franklin v. Coffee*, 18 Tex., 416; *Wilcox v. Hawley*, 31 N. Y., 648; *Richardson v. Busweel*, 10 Met., 506; and other cases cited in the note to *Bunnell v. Hayes*, 20 Am. Law Reg., 753.

Some courts, however, regarding these statutes as in derogation of the common law, have construed them strictly. *Rue v. Alter*, 5 Denio, 119; *Temple v. Scott*, 3 Minn., 421; *Hammer v. Freese*, 19 Penn. St., 257, and cases cited in the note above mentioned. It is generally agreed, however, that to constitute a family, within the meaning of a statute of this kind, there must be a condition of dependence and relationship by blood or marriage, or possibly adoption; and that the debtor who obtains exemption must be the head of the family, or at least the person upon whom the others are dependent.

A man having a wife alone comes of course within the statute. *Cox v. Stafford*, 14 How., Pr., 521. An unmarried man whose mother and sister live with him, and are dependent on him for support, is the head of a family." *Marsh v. Lazenby*, 41 Ga., 153; *Cannaughton v. Sands*, 32 Wis., 387. So, also, is a man who lives with and supports his widowed daughter and her child; *Blockwell v. Braughton*, 56 Ga., 390; or a bachelor for whom his sister keeps house; *Bailey, assignee, v. Comings*, 16 Nat. Bkt. Reg., 382; 1 N. J. L. J., 29; or a man who supports his dependent minor brothers and sisters. *Greenwood v. Maddox*, 27 Ark., 658. See, however, *Murray v. Shuck*, 6 Bush., 111. In Georgia, it is held that a wife who has no children of her own, is not the head of a family of the children of her husband by a former marriage. *Lathrop v. Loan Assn.* 45 Ga., 433. There is no doubt that a widow with children is entitled to exemption as a debtor having a family, and it has been held that where the husband abandons the family, the wife is entitled to exemption as the head of the family. *Wright v. Hayes*, 10 Tex., 130. In this case, the actual situation of the family, and not the legal obligation of the wife to support the children, must have been the ground of the decision. The husband was bound to support the family, but in fact he did not, and the wife was the person upon whom they actually depended for support. The only difference between that case and the one before us is the presence of the husband. This makes him the nominal head of the family, but is of no consequence so far as its support is concerned.

There is a case in Louisiana which comes near the case in hand: *Fuselier v. Buckner*, 28 La. Ann., 594. In this case it was held that a wife although she may have to contribute to the support of the family, is not "a debtor having a family dependent on him for support," but it does not appear that the husband had furnished nothing towards the support of the household. On the other hand, it is held in *Curtis v. McHugh*, Sup. Ct. of Mich., N. W. Rep., May 13, 1882, that a married woman who supports her family or contributes to its support by the employment of a team, may claim the benefit of the law which exempts from execution a team or other implements, etc., necessary to enable any person to carry on the business in which he is principally engaged. The question here was not whether she was a debtor having a family. In *Bell v. Keach*, Ct. of App. Ky., Ky. Law Journal, Feb. 1, 1882, it was held that a man may be considered as a housekeeper having a family when he is living with a woman received and

treated by him as his wife, although he was not married to her, and with his infant son by her. The court said the father was under a natural and legal obligation to support the son although born out of wedlock, and was entitled to the benefit of the exemption. In *Bingham v. Bush*, 33 Barb., 596, it was held that a woman who supported her minor children, did not cease to be a householder within the meaning of the exemption laws, when she married again and took her husband into her household. There was no evidence that that the husband did anything to support the family, and there was proof that she supported her children by the former marriage. In Indiana, the constitution provides that the privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure and sale for debt, and the act, in pursuance of this, exempts property of any resident householder to a certain amount. It was held in *Crane v. Waggoner*, 33 Ind., 83, that where the property of the husband does not reach the limit fixed by law, the wife may claim exemption upon an execution against her to an extent sufficient to make, with her husband's property, the amount protected by the statute. There is a case in Iowa which leans in another direction, it is held in *Van Doren v. Warden*, 48 Iowa, 186, that the husband is the head of the family with which he habitually earns his living, and that such property, belonging to the wife, is not exempted from execution against her."

Whether the husband is not able to work, or is able and will not, there seems to be no good ground, within the policy of the exemption laws, for distinguishing the legal condition of the family.

#### Assignment of Judges.

The following assignment of Judges for the several terms of the Supreme Court of the District, for the ensuing year, has been announced by the General Term:

GENERAL TERM: Chief Justice Cartter and Justices Hagner and Cox.

CIRCUIT COURT: Justice Mac Arthur.

EQUITY COURT: Justice James.

CRIMINAL COURT: Justice Wylie.

PROBATE COURT: Justice James.

DISTRICT COURT: Chief Justice Cartter.

GREAT travellers are often great liars.

**The Late Robert Ould.**

The older members of the bar of the District of Columbia, who were among the professional associates and friends of the late Robert Ould, formerly one of its most brilliant members, and for some time United States District Attorney, will read with pleasure the following appreciative tribute to his merit as a lawyer and his worth as a man, from the subsequent home of his adoption. It is from the *Virginia Law Journal*, published at Richmond:

"The death of a great and good man, at any time, is an event to be deplored. In the death of Judge Ould, the State of Virginia has lost one of the best men and greatest lawyers, we think, which she ever numbered at her bar. He was not only a learned lawyer and accomplished scholar, but the most ingenious, eloquent and effective advocate, to which we ever listened. Besides this, he was a good man, an earnest, pious and devoted Christian. He served his State and city in many positions of honor and trust, and always reflected credit upon himself and those he represented. We knew him in public at the bar, in his church work and in his family; and in every relation of life, our estimate of him is, that he was one of the most extraordinary men we ever came in contact with. We say these few words under the influence of the shock of his death, which has just occurred."

THE POPE OF ROME, it is reported, has decided to canonize Sir Thomas More, sometime Lord High Chancellor of England. The honor has rarely fallen on greater shoulders—or, shall we call it, on a greater shadow.

Sir Thomas More was not only a Christian—he was a lawyer in the highest sense of the term. A Christian—he went to the scaffold for his faith; a lawyer—he refused to put the Great Seal to what he considered a deed of infamy.

And when he laid down, in the fullness of his years, his gray head on the block, he had that consciousness of right that never deserts those who have "lived uprightly."

In our day the adding of another to the almost innumerable list of saints in the Roman martyrology may appear insignificant, but the recognition of the merits of so famous an English lawyer by the Roman Pontiff, is a matter which cannot be passed by without some words of commendation.

**Supreme Court District of Columbia**

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

JOHN E. KENDALL

v.

WILLIAM L. VANDERLIP.

AT LAW. No. 21,748.

{ Decided November 20, 1882.  
The Chief Justice and Justices COX and JAMES sitting.

1. Under the statutes of this District it is the *party paying* the illegal interest who is given the right to recover and not some other party; thus, in a case where illegal interest on certain promissory notes is paid by one not the maker of the notes, the maker cannot recover the money so paid.
2. And as he could not recover it in an independent suit neither can he, when sued on the notes, set it off against the payee's demand.
3. It is not competent for the court, where parties have actually paid money expressly as usury, to make a different application of it, and apply it as a payment on account of the debt and legal interest.

THE CASE is sufficiently stated in the opinion.

LEON TOBRINER for plaintiff:

1st. Section 715 of the Revised Statutes of the District of Columbia, contemplates, it will be observed, an *executory* contract, in which case if there be a usurious agreement, the plaintiff merely recovers his principal.

Section 716 contemplates an *executed* contract, and provides for an *aggressive not a defensive action*—it allows the person *who has paid* usurious interest to *sue for and recover all the interest* paid upon a usurious contract.

It is submitted that the statute having created a new right and declared the remedy, the right can only be enforced in the manner, and the remedy can only be that which the statute prescribes. *Farmers' National Bank v. Dearing*, 91st U. S., 35. *Burnet v. National Bank*, 98 U. S., 558.

In the case of the *Bank v. Dearing*, the Supreme Court says: "Where a statute creates a new offense and denounces the penalty, or gives a new right, and declares the remedy, the punishment or the remedy can be only that which the statute provides."

In *Barnet v. The Bank*, a case involving the right to set off usurious interest under what is known as the National Bank act, which provides, "And in case a greater rate of interest *has been paid*, the person or persons paying the same, or their legal representatives,



may recover back in any action of debt twice the amount of interest thus paid."

The Supreme Court says: "In the first defense, the payment of the usurious interest is distinctly averred, and it is sought to *apply it by way of off set or payment* to the bill of exchange at suit. In our analysis of the statute we have seen that this could not be done. Nothing more need to be said upon the subject;" and further: "Where a statute creates a new right, and provides a specific remedy or punishment, they alone apply. Such provisions are exclusive."

That a claim arising out of the penalty under the usury law was not intended to be used by way of set-off, is evident. The act respecting set-off was passed February 22, 1867—fully three years before, prior to the act regulating the rates of interest (April 22, 1870), and yet in the latter act there is no provision for set-off, but an affirmative remedy is only provided.

"The usury laws can only be taken advantage of as a defense in the manner prescribed by law." *Ramson v. Hays*, 33 Mo., 448; *Hadden v. Imes*, 24 Ill., 384; *Bank v. Sherwood*, 10 Wis., 184; *Eastwood v. Kennedy*, 44 Md., 563; *Wiley v. Yale*, 1 Metc., 553.

2d. The defense of usury is personal to the party paying or contracting to pay the same.

Sec. 716, R. S. D. C., *allows the person paying usurious interest to sue for and recover the same*. The right under this act is, therefore, personal to the party paying. *Lazear v. Nat. Union Bank of Maryland*, 52 Md., 122; *Cady v. Goodnow*, 49 Vt., 400; *Farmers' and Mechanics' Bank v. Kimmel*, 1 Mich., 84.

3d. Is the claim arising out of the alleged payment of usury such a claim as can be made the subject matter of a plea in set-off by the defendant in this case?

Sec. 810 of the R. S. D. C., provides: "Mutual debts between the parties to an action, may be set off," &c., &c.

To be mutual, the claim or debts sought to be set-off must belong to the defendant in his own right, it must be such that he could maintain an independent suit thereon in his own name. *Waterman on Set-off and Recoupment*, § 150 *et seq.*

This the defendant could not have done with the claim he seeks to establish as a set-off, it therefore does not meet the requirements of a "mutual debt."

E. A. NEWMAN for defendant:

A debt arising out of a penalty is the proper subject of set off. Sec. 810, Rev. Stat. D. C.

Set-off is in the nature of a cross action. *Chase v. Strain*, 15 N. H., 535.

Statutes of set-off ought to be liberally expounded to advance justice and prevent circuity of action. *Pate v. Gray*, 1 Hemp., Ark., 155.

Money paid as usury may be set off against the principal in an action for the principal. *Cook v. Lillo*, 103 U. S., 792; *Farwell v. Meyer*, 35 Ill., 40; *Sayler v. Daniels*, 37 Ill., 331; *Fay v. Lovejoy*, 20 Wis., 424; *Wood v. Lake*, 13 Wis., 94; *Dole v. Northup*, 19 Wis., 266.

In the case of *Ewing v. Griswold*, (43 Vt., 100), the court used this language: "The general right of a defendant in an action of *assumpsit* to offset any claim that he might recover in a declaration for money had and received cannot be questioned, and we think there is no reason or authority for making the action to recover usury an exception."

Where, upon a promissory note, the plaintiff has received interest above the rate fixed by law, the defendant in a suit upon the note is entitled to have such excess deducted. *Larahee v. Lambert*, 32 Me., 97; *Loud v. Merrill*, 45 Me., 516; *West v. Meddock*, 18 Ohio St., 418.

Surety or accommodation maker may take advantage of usury. *Livingstone v. Harris*, 11 Wend., 329; *Post v. The Bank*, 7 Hill, 391; *Thompson, Ex'r, v. Thompson*, 8 Mass., 135; *Smith v. Cooper*, 9 Iowa, 376; 9 Iowa, 254 and 276; 33 N. Y., 31.

A fair construction of our statute touching usury, as compared with the construction given similar statutes would authorize the party bound by the usurious contract to plead set-off or recover usury. Rev. Stat., §§ 713 to 717, inclusive; *Cole v. Savage*, Clark's Ch. R., (N. Y.), 487, and authorities cited, *supra*.

Mr. Justice Cox delivered the opinion of the court.

This is an action of *assumpsit* to recover a balance of \$576.92, alleged to be due on certain promissory notes, with interest from the 9th of March, 1868. There were ten pleas filed in the case, covering every possible defence that could be made to a promissory note, but only two of these pleas require notice here, the plea of set-off and the plea of partial payment.

At the trial it turned out in proof that *Vanderlip*, the defendant, was simply an accommodation maker of the notes for benefit of a third party, one *Seth A. Terry*, who was not a party to the notes. *Terry* delivered the notes to *Kendall* (although they were in form made payable to *Kendall* in the first instance) and received the full amount of them from *Kendall*; and, under the plea of set-off there was an offer to prove for the defence that at the

time Terry obtained the money from the plaintiff there was a stipulation to pay him extra interest at the rate of five per cent. a month, and that Terry did, in fact, pay as such extra interest, the sum of \$347.82; and the defendant claimed the right to have this sum deducted from the \$575.92, the balance due on the notes, of principal and legal interest. The court below refused to admit the evidence on this point, and exception was taken; and the only question before us in the case is: Had the defendant the right to have this deduction made, that is to have this usurious interest deducted from the legal debt?

The arguments for the defence in support of this offer were:

1st. That the Revised Statutes of the District of Columbia give the right to a party who pays illegal interest to recover it in an action.

2d. That where a party has a right to maintain an action for a money demand, he has a right to set that off against a demand in an action against him.

3d. That the maker of the note is competent to make this defence as well as any other party.

On the part of the plaintiff two answers to this claim are made. It is said, first, that the Revised Statutes of the District provide a new right and declare the remedy, and that in such a case, only the specific remedy which the law prescribes can be resorted to. Section 716 of the Revised Statutes of the District gives simply the right to sue for the illegal interest paid—not the right to set it off by way of defence in an action; and decisions of the Supreme Court have been appealed to in which it has been held that, although the National Bank act provides that a party paying illegal interest may recover twice the amount in an action; yet he cannot set off the amount so illegally paid, in an action against him; his only remedy being the one provided for in the act. It is a question with us whether this decision would govern in a case arising under the law of the District, which does not give the right in exactly the same shape as that in which it is given by the National Bank act; but it becomes unnecessary in this case to decide that question.

The second point is that the law of set-off applies only to mutual demands. That is, that the defendant may set off a demand which he has against the plaintiff, but not a demand which belongs to another party. Under our statute it is *the party paying the illegal interest* to whom is given the right to recover, and not some other party. The language of the statute is: "If any person

or corporation within the District shall directly or indirectly take or receive any greater amount of interest than is provided for in this chapter, upon any contract or agreement whatever, it shall be lawful for *the person or his personal representative*, or the corporation *paying the same*, to sue for and recover all the interest paid upon any such contract or agreement." Now, in this case, the illegal interest was paid by Terry, for whose accommodation these notes were made, not by the maker of the notes; and it is very plain that the maker cannot maintain a suit against Kendall to recover money paid by Terry, a third party, out of his own pocket.

This being the case, the defendant cannot set off in this suit this claim which he could not recover in an independent suit against the party to whom it was paid. This answer is, we think, conclusive, at least upon the defence made in its present form. Indeed, this very question has been decided by the court of appeals in Maryland, and also by the court of last resort in Wisconsin, in a case almost exactly like the present, with the exception that there the party for whose accommodation the note was made was a party to the paper, whereas in this case Terry was not a party to these notes. In that case, it appeared that the defendant had never paid the plaintiff anything upon the note, either as interest or usury, but that the person for whose accommodation it was endorsed, had; and the court held that, so far as the personal payments were concerned, the defendant could not apply them to his own benefit, either as payment or as set-off.

So that, as far as this evidence was offered by the defendant to sustain the plea of set-off, we think the court below was correct in ruling it out.

We have looked through the record and the decisions cited, to see whether the defence could not be made in some other form. There is a plea of *partial payment* covering the same facts. Now, if this money could be treated as a payment on account of the principal and legal interest, no matter by whom made, such payment would, of course, reduce the debt by so much, and the plaintiff could only recover the balance actually due. Perhaps, then, if this could be treated as such a payment, although the evidence was offered in support of the defence of *set-off*, it would still be pertinent under the issues in this action; but the question is: Will the law impute or ascribe or apply a payment made expressly as usury, to the principal and legal interest of a debt? There is a great difficulty in doing this. The case put is that of a debt, partly legal and

partly illegal—not illegal in the sense of *malum in se*, but in the sense of *malum prohibitum*, and it may be regarded also as made illegal for the benefit of the defendant. Now, the question is, whether, when payments of this character have been made and applied to illegal interest, by consent of both parties, it is the duty of the court to apply those payments to the part of the debt which is legal and not to that which is illegal? When the parties have agreed that the payment shall be applied to a part of the debt which was not legally binding, and have actually made such application, can the court step in and say: We will undo all that and make a new agreement for you, so that this payment shall be applied, not to the part of the debt which is usurious but to the part which is legal? It seems to us that to do this would be transcending the power of the court.

A number of cases have been cited on the part of the defence, from the reports of Wisconsin, Illinois, New York, Massachusetts and Iowa. In one case in Wisconsin it was held that the party should be allowed to deduct, by way of set-off, the interest which had been illegally paid. The payment was expressly relied upon as a set-off, not as an application of the illegal payment to the legal part of the debt.

In an Illinois case general language was used to the effect that the party might deduct; but the pleadings are not set out nor does it appear on what principle the court so held.

In certain cases cited from the Maine reports the right to deduct was allowed expressly upon the authority of the Revised Statutes of that State.

The New York and Massachusetts cases cited, have no application to this direct question.

There is an Iowa case which holds that where the party gave a separate note of \$300 to cover usury upon another debt, the defendant, who had himself given and paid the note, might claim to have it deducted.

In other words, notwithstanding the application of the payment made by the parties themselves, the court undertook to make another application and to treat it precisely as it would treat a payment made without any specific appropriation; but that decision seems to be contrary to the whole tenor of the authorities. We think, therefore that it is not competent for the court, when parties have actually paid money expressly as usury to afterwards make a different application of the money, and apply it as a payment on account of the debt and the legal interest.

So that even in connection with the defence of partial payment this evidence was not admissible, the judgment is therefore affirmed. The Chief Justice dissenting.

## United States Supreme Court.

NO. 117—OCTOBER TERM, 1881.

CATHARINE S. LANSDALE, Administratrix of  
NOAH STINCHCOMB, deceased, Appellant,

v.

ADDISON M. SMITH, LETITIA ALLEN, and  
SUSAN G. HALL.

*Appeal from the Supreme Court of the District of Columbia.*

Courts of equity deny relief to those who delay for an unreasonable length of time in asserting their claims.

If the case, as stated by the bill, appears to be one which a court of equity, on account of the statements of the claim, or the laches of complainant, will refuse to aid, the defendant may resist it by demurrer.

Mr. Justice HARLAN delivered the opinion of the court.

It has been a recognized doctrine of courts in equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in asserting their claims. *Elmendorf v. Taylor*, 10 Wh., 168; *Piatt v. Vattier*, 9 Pet., 416; *Maxwell v. Kennedy*, 8 How., 222; *Badger v. Badger*, 2 Wall., 94; *Cholmondelay v. Clinton*, 2 Jac. & Walk., 141; 2 Story's Eq. Jur., § 1,520. In *Wagner v. Baird*, 7 How., 259, it was said that long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and is not to be excused except by showing some actual hindrance or impediment, caused by the fraud or concealment of the party in possession. The case must be one which appeals to the conscience of the chancellor.

And, contrary to the view pressed in argument, a defense grounded upon the staleness of the claim asserted, or upon the gross laches of the party asserting it, may be made by demurrer, not, necessarily, by plea or answer. A different rule has been announced by some authors, and in some adjudged cases; generally, however, upon the authority of *The Earl of Deloraine v. Browne, &c.*, 3 Brown's Chancery Reports, 633. Lord Thurlow, who decided that case, is reported to have declared, when overruling a demurrer to a bill charging fraudulent representations as to the value of an estate, and praying an account of rents, profits, &c., that his action was based upon

the ground that length of time, *proprio jure*, was no reason for a demurrer; that it was only a conclusion from facts, showing acquiescence, and was not matter of law; and that he could not allow a party to avail himself of an inference from facts on a demurrer. But in *Hovenden v. Lord Annesley*, 2 Sch. & Lef., 637, decided in 1806, Lord Redesdale expressed his disapproval of the decision of Lord Thurlow, as reported by Brown, and said that it was rendered in a hurry, when the latter was about to surrender the seals, and when much injury might have been done to parties had judgments not been given before the latter retired from office. The rule, as announced in *Hovenden v. Lord Annesley*, was, "that when a party does not by his bill bring himself within the rule of the court, the other party may by demurrer demand judgment, whether he ought to be compelled to answer. If the case of the plaintiff, as stated in the bill, will not entitle him to a decree, the judgment of the court may be required by demurrer, whether the defendant ought to be compelled to answer the bill." That, the court said, was matter of the law of a court of equity, to be determined according to its rules and principles.

Such is, undoubtedly, the established doctrine of this court as announced in many cases. In *Maxwell v. Kennedy*, *supra*, the court, speaking by Chief-Justice Tancy, approved the rule as announced by Lord Redesdale. After referring to *Piatt v. Vattier*, *supra*, and to *McKnight v. Taylor*, 1 How., 168, and *Bowman v. Wathen*, Id., 189, it was said, that "the proper rule of pleading would seem to be that when the case stated by the bill appears to be one in which a court of equity will refuse its aid, the defendant should be permitted to resist it by demurrer. And as the laches of the complainant in asserting his claim is a bar in equity, if that objection is apparent on the bill itself, there can be no good reason for requiring a plea or answer to bring it to the notice of the court." In the more recent case of *Badger v. Badger*, *supra*, the court, speaking by Mr. Justice Grier, said, that a party, who makes an appeal to the conscience of the chancellor, "should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case, on his own showing, without inquiry whether there is a demurrer or formal plea of the

statute of limitations contained in the answer." *Rhode Island v. Massachusetts*, 15 Pet., 272.

These principles are decisive of the case before us.

By duly recorded deed of July 18th, 1818, signed by John P. Van Ness (his wife uniting in the conveyance), and by Noah Stinchcomb, the former conveyed to the latter, at a fixed annual rent, lot 3, square 455, in the city of Washington, to have and to hold, &c., unto Stinchcomb, his executors, administrators and assigns, for the term of ninety years, renewable forever. Stinchcomb entered under the deed, made valuable improvements upon the lot, and remained in possession until the year 1833 or 1834, when Van Ness re-possessed himself of the premises, in virtue of a clause in the deed in these words: "Provided, always, that if the said rent or any part thereof shall be in arrear and unpaid for the space of thirty days next after the time at which the same is reserved to be paid, as above, being first lawfully demanded, that then it shall and may be lawful to and for the said John, his heirs and assigns, into the demised premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, occupy and enjoy, as in his or their former estate, until all such arrearages of rent, with legal interest from the time at which said rent shall have become payable, and all and every cost, charge and expense incurred by reason of the non-payment of said rent shall be lawfully satisfied and paid, or make distress therefor, at his or their option."

Stinchcomb died on the 11th day of February, 1841, without, so far as the bill discloses, making any effort to re-possess himself of the property. Van Ness died in 184-, and, upon the division of his estate, the lot in question was assigned to Matilda E. Van Ness, one of his heirs-at-law, by whom it was subsequently conveyed to Wm. G. Deal and others. The present defendants hold the premises by virtue of the before-mentioned assignment and the deed of Matilda E. Van Ness and her assigns.

The complainant, as administrator of Stinchcomb, having offered and now offering, to pay all rents, interest, charges and costs, which may have accrued upon the property, asks a decree permitting her to redeem the same, and ordering an account, which will show, as well the principal and interest of rents in arrear due defendants, as the rents and profits received by the latter since they entered into possession, setting off the one against the other.

Such is, substantially, the case made by the bill; and such is the relief asked, notwithstanding suit was delayed until after the ex-

piration of about forty-five years from the re-entry of Van Ness, 'as in his former estate,' and until more than thirty years had elapsed after his death and the assignment of the lot in question to one of his heirs-at-law.

The case is plainly one of gross laches on the part of Stinchcomb and those claiming under him. His right under the deed of 1818, to repossess himself of the premises by paying rents and charges in arrear, accrued the moment Van Ness re-entered in 1833 or 1834. But this right could not last forever. Its assertion could not be safely neglected for an unreasonable length of time. The bill discloses no plausible, much less sufficient, explanation of the long delay ensuing, after 1833, without any movement upon the part of Stinchcomb, his representatives or heirs, to recover the property, by discharging the rents and charges in arrear, and re-entering, as might have been done, in pursuance of the provisions of the deed of 1818. On the contrary, the facts set out in the bill justify the conclusion either that Stinchcomb elected, in his lifetime, to abandon all claim upon the property and leave Van Ness in possession, as in his former estate, or that his claim was, in some way, satisfactorily arranged or discharged. The complainant and those whom she represents have slept too long upon their rights. The peace of society and the security of property demand that the presumption of right, arising from a great lapse of time, without the assertion of an adverse claim, should not be disturbed. In such cases, sound discretion requires that the court should withhold relief.

Some reference has been made to the decisions of the Supreme Court of Maryland, the laws of which States, as they existed on the 27th day of February, 1801, except as since modified or repealed by Congress, continue in force in this District. It is only necessary to say that the principles to which we have referred have been steadily upheld by the Supreme Court of Maryland, not upon the ground of any changes in the law of that State since 1801, but in deference to the established doctrines governing courts of equity in giving relief to those who seek the enforcement of antiquated demands. *Hepburn's case*, 3 Bland's Ch., 110; *Hawkins v. Chapman*, 26 Md., 100; *Nelson v. Hagerstown Bank*, 27 Id., 74; *Syester v. Brewer, Id.*, 319; *Frazier v. Gelston*, 35 Id., 314.

For the reasons given, we are of opinion that the court below properly sustained the demurrer, and dismissed the bill for want of equity.

The decree is affirmed.

## The Courts.

### U. S. Supreme Court Proceedings.

JAN. 3, 1883.

Thos. J. Portis, of St. Louis, Mo., and John W. White, of St. Paul, Minn., were admitted to practice.

No. 1060. *Isaac Wormser v. The United States*. From C. C. U. S., Cal. Judgment of affirmance was on motion stricken out and judgment of reversal was entered.

No. 918. *John H. Hayward v. A. H. Andrews et al.* From C. C. U. S., S. D. Ill. Submitted pursuant to 20th rule.

No. 1051. *Elias Greenebaum et al. v. Robert E. Jenkins, assignee, &c.* From S. C. Ill. Same.

No. 1137. *R. E. Jenkins, assignee, &c., v. The International Bank of Chicago et al.* From S. C. Ill. Same.

No. 1138. *R. E. Jenkins, assignee, &c., v. The International Bank of Chicago et al.* From S. C. Ill. Same.

No. 140. *Lot E. Morrill, collector, &c., v. John Winslow Jones*. From C. C. U. S., Maine. Argued and submitted.

No. 141. *The United States, on behalf of D. D. Potter et al. v. The Steam Vessels of War "Seaboard" and "Texas" et al.* From S. C. D. C. Same.

JAN. 4, 1883.

H. P. Mabry, of Fort Worth, Texas, was admitted to practice.

No. 142. *Reuben Hoffheim v. C. Russell & Co.* Argument commenced.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

Present, CARTER, C. J., and Justices COX and JAMES.

JAN. 2, 1883.

*Fisk et al. v. Hollander & Bro.* Infringement of a patent. Opinion by Justice James, and decree making injunction perpetual.

*Gelger v. Union Brethern M. Aid Society of Penn.* Opinion by Justice Cox affirming judgment.

*Lilley v. Strasburger*. Judgment affirmed by consent.

*Cox & Bro. v. Strasburger*. Argued and submitted.

U. S., ex rel. *Beverly et al., v. The Comm'r D. C.* Rule to show cause why writ of mandamus should not issue as prayed. Discharged.

*McCormick v. The Freedman's S. & T. Co. et al.* Argued; prayer to be allowed to appeal on the part of the complainant. Submitted.

*Leugh v. Davis*. Petition of an amendment to decree. Filed and dismissed.

*Curtis et al. v. Strasburger*. Argued and submitted.

*Stacy et al. v. Strasburger*. Same.

*Kinney v. Meguire et al.* Death of defendant James F. Meguire suggested, and order that his representatives come in and become parties to the suit.

U. S., ex rel. *Hoe & Bro., v. The District of Columbia*. Mandamus to compel a revision. Rule dismissed.

JAN. 3, 1883.

Loundsburg et al. v. Strasburger. Decree below reversed and cause remanded.

Higgins et al. v. Strasburger. Decree below reversed and cause remanded.

Bennett et al. v. Strasburger. Decree below affirmed.

Powell et al. v. Strasburger. Argued and submitted.

Cloges v. Strasburger. Same.

Baltimore Furniture Manufacturing Co. v. Dungan. Same.

Jackson et al. v. Miller. Same.

JAN. 4, 1883.

District of Columbia v. Clephane. Suit to recover amount expended in the repairs of certain streets. Argued and submitted.

JAN. 5, 1883.

U. S., use of Catherine Sonnenschmidt v. Sonnenschmidt et al. Judgment reversed and remanded.

Nelson v. Henry et al. Argued and submitted. Assignment for Monday: 87, 88, 90, 93, 94, 95, 96, 97, 98 and 99.

## CIRCUIT COURT.—Justice Mac Arthur.

JAN. 2, 1883.

Keyser v. Gunning. Judgment by default.

Weaver v. Berlin. Dismissed.

U. S., ex rel. Gregory, v. Birney et al. Certified to General Term.

JAN. 8, 1883.

McCullough v. Poplar. Judgment by default.

Ladd Tobacco Co. v. Boone. Same.

Taylor et al. v. Carroll. Same.

United States v. Stout et al. Same.

Porter v. Moran. Same.

Gamble v. Fisher. Verdict for plaintiff for \$404.

Hanna & Bailey v. Douglass. Judgment on inquiry for \$8,550.60.

Beverly v. Brooks. Death of plaintiff suggested.

JAN. 4, 1883.

Smith v. White. Judgment by default.

Hutchinson v. Petz. Same.

American Life Insurance Co. v. Carroll et al. Same.

Hume's Administrators v. Forney. Judgment by consent for \$302 25.

Farmers' & Mechanics' Bank v. Hume. Verdict for defendant.

Johnson & Co. v. Bletz et al. Death of Magill suggested and suit revived as to survivors.

Kendall v. Dainese. Judgment of condemnation.

JAN. 5, 1883.

Johnson & Co. v. Blitz et al. Leave to amend declaration.

Towles v. Turner. Plaintiff called and suit dismissed.

Clark v. District of Columbia. Leave to amend declaration.

Assignment for Monday, January 8, 1883: 207, 208, 209, 215, 216, 217, 218, 219, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232, 233, 234 and 235.

## EQUITY COURT.—Justice Hagner.

DEC. 27, 1882.

7359. Second National Bank v. Presbrey. Decree pro confesso as to certain defendants.

3850. Klockowski v. Presbrey. Order directing defendant to pay examiner.

2584. Young v. Brent. Sale finally ratified.

7801. Dayton v. Dayton. Auditor's report ratified.

7803. Pepper v. Shepherd. Decree pro confesso against Mary G. Shepherd.

DEC. 28, 1882.

8330. Knight v. Baltimore & Potomac R. R. Co. Argued and submitted.

8298. Burch v. Burch. Sale ratified nisi.

8407. McNalley v. Ward et al. Appearance of absent defendant ordered.

4075. Sturgis v. Holiday. Auditor's report confirmed.

8403. Scheen v. Oertley. Guardian ad litem appointed.

8045. Tucker v. Oslin. Sale ratified nisi.

DEC. 29, 1882.

8260. Quinn v. Quinn. Divorce *a vin mat.* decreed on account of desertion.

2683. Giles Co. Iron Works v. Fisher. Time to take depositions extended.

7740. Wood v. Wood. Reference to auditor.

3152. Bailey v. Bond. Same.

JAN. 2, 1883.

8113. Magruder v. Haight. Order appointing guardian ad litem.

8167. Pfeiffer v. Stralning. Sale confirmed nisi.

7750. Bibb v. Hunter. Sale confirmed nisi and referred to auditor.

8280. Dodge v. Offley. Sale set aside and resale ordered.

JAN. 3, 1883.

8264. Dugan v. Clarke. Referred to auditor.

8322. Potter v. Potter. Same.

8338. Hawes v. Jarvis. Pro confesso.

8361. Dunlop v. Butting. Same.

8353. Beckman v. Beckman. Pro confesso and referred to auditor.

8366. Willey v. Willey. Appearance of absent defendant ordered.

8380. Lazenby v. Lazenby. Same.

8309. Moore v. Moore. Sale finally ratified and referred to auditor.

8101. Stephenson v. Ford. Sale finally ratified.

8369. Moffett v. Moffett. Testimony ordered taken.

8296. Dodd v. Dodd. Same.

8324. Brown v. Westling. Decree pro confesso against certain defendants.

8118. Mackall v. Richard. Remanded for further proof.

8412. Speer v. Clyde. Appointment of guardian ad litem.

JAN. 4, 1883.

8000. Keyser v. Friederich. Referred to auditor.

7630. Dutton v. Lewis. Same.

8228. Tayloe v. Tayloe. Trustee authorized to sell, &c., and reference.

8273. Keyser v. Halstead. Decree pro confesso.

7803. Pepper v. Shepherd. Guardian ad litem appointed.

7777. Schell v. Ebert. Sale ratified nisi.

8373. Hume v. Brown et al. Decree pro confesso as to certain defendants.

3797. Washington Market Co. v. Hoffman. Motion to tax receiver's commission as part of costs overruled.

JAN. 5, 1883.

8376. Hoover v. Marr. Chas. Baum made party complainant.

8345. Davis v. Davis. Decree pro confesso against Osgodley ordered.

8197. Allgaier v. Dennis. Appointment of guardian ad litem.



**CRIMINAL COURT.—Justice Wylie.**

DEC. 27, 1882.

U. S. v. Murphy and O'Leary. C. C. Cole moved to admit the defendants to bail pending the hearing of a motion for a new trial. Assistant District Attorney Taggart said it was a novel practice to allow such a motion. The court said it would give its decision next Saturday.

U. S. v. Brady et al. Geo. J. Brewer and John Sherman were called, the former in reference to the routine observed in the Post Office. The latter as to the personal relations of the defendants. The Government put in evidence certain contracts. The defense objected to their reception, they not being the contracts stated in the indictment. The objection was overruled and an exception noted.

DEC. 28, 1882.

Geo. J. Brewer recalled and cross-examined by Mr. Wilson. P. H. Woodward, the next witness, examined on behalf of the Government. Charles H. French testified. He was handed a petition, but as it was not the one set out in the indictment it was objected to.

DEC. 29, 1882.

Court, after discussion, admitted the petition, as it might come in as cumulative evidence of conspiracy. Chas. H. French was recalled and testified.

DEC. 30, 1882.

U. S. v. Murphy and O'Leary. Motion to admit to bail pending a hearing before the Court in General Term on appeal from the Criminal Term. The motion was overruled.

JAN. 2, 1883.

United States v. Brady et al.

The defense asked for a certain paper. On failure to produce it a subpoena duces tecum was applied for to produce all the papers relating to the route under consideration. Mr. French was cross-examined. Thos. S. Nightingale, Ralph M. Grimes, John Sherman, and Charles H. Laird testified on the part of the prosecution.

U. S. v. Grant Johnson. Indicted for breaking into a store. Prisoner withdrew plea of not guilty and pleaded guilty. Sentenced to the penitentiary for three years.

## The Courts.

**CIRCUIT COURT.—New Suits at Law.**

DEC. 26, 1882.

24119. Baldwin Sexton & Peterson v. Adams Express Co. Account, \$2,500. Pliffs attys, R. Fendall.

24120. Margaret Harrover v. Samuel T. Luckett et al. Damages, \$10,000. Pliffs attys, W. B. Webb.

24121. A. Richards & Co. v. Thos. D. Lewis. Note, \$570.15. Pliffs attys, W. B. Webb.

24122. Same v. George O. Cook. Note, \$150. Pliffs attys, same.

DEC. 27, 1882.

24123. Asbury Lloyd v. Samuel E. Mullen. Certiorari. Defts attys, W. T. Johnson.

DEC. 28, 1882.

24124. Ferris Jacobs, jr. v. John T. Salter et al. Note, \$1,000. Pliffs attys, Miller, Riddle & Padgett.

24125. Marvin Eastwood v. Isaac A. Roscrans. Note, \$800. Pliffs attys, W. J. Newton.

24126. Charles Zinn & Co. v. James J. Chapman. Acc't., \$145.88. Pliffs attys, H. W. Garnett.

24127. Samuel Shepherd v. Corbit Bacon. Note, \$500. Pliffs attys, R. D. Mussey.

DEC. 29, 1882.

24128. Seaton Perry et al. v. Elizabeth Cranford. Account, \$70.79. Pliffs attys, E. R. Perry.

24129. Martha Preuss v. Thomas E. Sellbaker. Appeal. Defts attys, R. Christy.

24130. Sarah A. Linthicum v. Richard H. Trunnell et al. Replevin. Pliffs attys, Bradley & Duval.

DEC. 30, 1882.

24131. Robert O. Edmonston v. Felix Muldoon. Account, \$74.29. Pliffs attys, W. K. Duhamel.

JAN. 2, 1883.

24132. John H. Wemple et al. v. Griffin S. Reed. Judgment of Justice Richards, \$100. Pliffs attys, Edwards & Barnard.

JAN. 3, 1883.

24133. Davis W. Batley v. William B. Moses. Certiorari. Defts attys, Cook & Cole.

24134. Frances Mason v. James W. Nickens. Account, \$248.50. Pliffs attys, Joseph Forrest.

24135. Francis B. Mohan v. George A. Talbot. Note, \$411.98. Pliffs attys, Appleby & Edmonston.

JAN. 4, 1883.

24136. Edward R. Ives et al. v. Bernard Silverberg. Note, \$266.50. Pliffs attys, H. W. Garnett.

24137. John L. Dart v. The American Baptist Home Mission Society. Damages, \$3,000. Account, \$155.32. Pliffs attys, Bond and Smith.

**IN EQUITY.—New Suits.**

DEC. 23, 1882.

8405. Hamilton J. Rothrock v. John A. Parker. Injunction. Com. sols., Earle and Curtis. Defts sol., M. Church.

DEC. 27, 1882.

8406. Chas. B. Church v. John F. Van Riewick. For an account. Com. sols., Hine & Thomas.

DEC. 28, 1882.

8407. Valentine McNally v. Elijah J. Ward et al. To establish lien. Com. sols., Hagner & Maddox.

DEC. 30, 1882.

8408. Jesse L. Adams et al. v. James L. Adams et al. For partition by sale. Com. sols., Hanley & Salter.

JAN. 2, 1883.

8409. Frank H. Burns et al. v. George W. Cochran et al. To terminate trust, &c. Com. sols., Edwards & Barnard.

8410. Frank B. Smith v. Susan Burch et al. To sell. Com. sols., Edwards & Barnard.

8411. German American National Bank, upon petition of B. U. Keyser. To compound indebtedness of John H. Brooks. Com. sol., B. U. Keyser.

JAN. 3, 1883.

8412. Maria O. Speer et al. v. Mary O. Coyle et al. For partition. Com. sol., A. O. Bradley.

JAN. 4, 1883.

8413. Edmonia Vail v. John A. Vale. For divorce. Com. sols., Cook & Cole.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 5, 1883.**

In the matter of the Will and Codicil of Thomas Harper, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by Lettie Markes Harper.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of February next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Record and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.  
Test: 19 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, 1st-Comm. 29, 1882.**

In the case of Ida Harting, Administratrix of Charles Harting, deceased, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 19th day of January A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them. Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.  
J. J. WILMARTH, Solicitor.

1-3

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia.  
HENRY W. BURCH ET AL. } No. 8,298. Equity.

JOHN E. BURCH ET AL.  
Henry W. Burch, the trustee appointed by the decree in this cause to sell the real estate in the proceedings mentioned, having reported to the court that, after complying with the requirements of said decree he sold part of lot five (5), in square three hundred and forty-five (345), to Abraham L. Johnson, for the sum of thirty-seven hundred and twenty-five dollars (\$3,725); also, that he offered for sale at public auction parts of lots one (1), twenty nine (29) and thirty (30), square two hundred and fifty (250); part of lot four (4), square two hundred and twenty-seven (227), and the western half of lot eight (8), square two hundred and twenty-eight (228), but could not sell the same; that since said endeavor to effect a sale he has received the following offers to purchase at private sale, to wit: parts of lots one (1), twenty-nine (29) and thirty (30), square two hundred and fifty (250), for the sum of four thousand five hundred dollars (\$4,500), from Theodore I. King and Metella King; and part of lot four (4), square two hundred and twenty-seven (227), for the sum of fifteen hundred dollars (\$1,500), from Annie C. Humes;

It is, therefore this 28th day of December, A. D. 1882, ordered, that said offers of Theodore King and Metella King and Annie C. Humes, be and the same are hereby accepted; and it is further ordered and decreed that the sale of said lots to Abraham L. Johnson, Theodore I. King and Metella King and Annie C. Humes, be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of January, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 27th day of January, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. 1-3 Test: R. J. MEIGS, Clerk

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia.  
LEONARD SCHELL } No. 7,777. Equity.

JOHN EBERT ET AL.  
Leon Tobriner and Richard P. Jackson, trustees herein, having reported that on Thursday, December 28, 1882, they sold lots 13, in square 983, with the improvements thereon to Nathaniel E. Thompson, for \$1,120, lots 12 and 14, in square 983, to Miss Mary Wall, for \$405 and \$330, respectively, and lots 5 and 6, square 983, to Lewis D. Means, for \$400 each;

It is, this 4th day of January, A. D. 1883, ordered that said sale be confirmed and ratified unless good cause to the contrary be shown on or before the 4th day of February, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

The report of the trustees' states that the total amount of said sales is \$2,855.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, the 3d day of January, 1883  
MINNIE S. WILLEY } No. 8,368. Eq. Doc. 22.

CHARLES F. WILLEY.  
On motion of the plaintiff, by Mr. J. G. Bigelow, her solicitor, it is ordered that the defendant, Charles F. Willey, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 1-3 R. J. MEIGS, Clerk

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia.  
CATHERINE PFEIFFER } No. 8,167. Eq. Doc. 22.

JOHN STRAINING ET AL.  
The order entered herein on the 31st day of October, 1882, conditionally confirming the sale of the real estate made and reported herein by C. C. Cole, trustee, not having been published as provided in said order:

It is, this 2d day of January, 1883, ordered, that said sale stand confirmed at the expiration of thirty days from this date. Provided, a copy of this order be published once per week for three successively in the Washington Law Reporter within the said thirty days. Said sale was of lot numbered thirty-eight (38), in Homes' subdivision of Mount Pleasant and said report states that it was sold to Elizabeth Straining, at \$1,975.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann M. Green, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1882.  
1-3 WILLIAM W. WISHART 601 F street n. w.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, holding a Special Term for Orphans' Court Business, December 29, 1882.  
In the case of Reginald Fendall, Executor of Eleanor O. Gillet, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 26th day of January A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 1-3 H. J. RAMSDELL, Register of Wills.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, the 24th day of December, 1882.  
VALENTINE McNALLY } No. 8,407. Eq. Doc. 22.

ELIJAH J. WARD ET AL.  
On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 1-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, Sitting in Equity, December 28, 1882.  
MARTHA F. TUCKER } No. 8,045. Eq. Doc. 22.

CHRISTIAN OLSEN ET AL.  
Bainbridge H. Webb and Franklin H. Mackey, trustees, having reported to the court the sale of the real estate mentioned in the proceedings in this cause for \$615:

It is, this 28th day of December, A. D. 1882, ordered that said sale, as so reported be finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of January, A. D. 1883, next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
True copy. Test: 1-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, the 3d day of January, 1883.  
BENJAMIN C. LAZENBY } No. 8,386. Eq. Doc. 22.

MARGARET C. O. LAZENBY ET AL.  
On motion of the plaintiff, by Mr. Chas. A. Walter, his solicitor, it is ordered that the defendants, George M. Sweet, Frank M. Sweet, John O. Tanner, Anna A. Tanner, Fannie M. Fisher and Lillie M. Tenner, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 1-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF

Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Mana, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kahulu, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kahololilo, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kolona, late of Kau, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kemaha, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Nathelus, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter, previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kanalu, late of Onomea, Hawaii, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of W. Bull, alias Kaloheaulani, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Josiah Foster, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Moopli, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Bill, alias Hookashua, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Keawe, late of Honolulu,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Napua, late of Hilo Hawaii,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Kellilepa, late of Honolulu,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January, 1883, next,  
at 11 o'clock a. m., to show cause why Letters of Admin-  
istration on the estate of the said deceased, should not  
issue as prayed. Provided, a copy of this order be pub-  
lished once in the Washington Law Reporter previous  
to the said day.

By the court. A. B. HAGNER, Asso. Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business, January 3, 1883.

In the matter of the estate of Kalua, late of Hawaiian  
Islands, deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January, 1883, next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as prayed.  
Provided, a copy of this order be published once in the  
Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Kanehelua, late of Lihue,  
Kauai, H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Pau, late of Honolulu, H.  
I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made by  
James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Tom, late of Honolulu,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made  
by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Oi, late of Honolulu, H.  
I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made  
by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the estate of Kamaka, late of Honolulu,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made  
by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, January 3, 1883.

In the matter of the Estate of Piko, late of Honolulu,  
H. I., deceased.

Application for Letters of Administration ancillary on the  
estate of the said deceased has this day been made  
by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this  
court on Thursday, the 11th day of January next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Leimakani, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Mana, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Lilon, alias John Ross, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the court. A. B. HAGNER, Asso. Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, January 3, 1883.

In the matter of the estate of Kamai, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday the 11th day of January, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Kaihe, late of Onomea, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test; 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Nunu, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Mahial, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Kaapa, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the estate of Henry Kuaba, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 3, 1883.

In the matter of the Estate of Maele, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Keawe, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of John Foster, late of Kalihi, Oahu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Waihalulu, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Mahoe, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Stephen Bolabola, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter, previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Keolannui, late of Kono Hawaii, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of W. Bull, alias Kaloheaulani, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kealaiki, late of Honolulu, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kalohai, late of Kohala Hawaii, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.

**I**N THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 3, 1883.

In the matter of the Estate of Kainaina, late of Kaw, Hawaii, H. I., deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Thursday, the 11th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 1-1 H. J. RAMSDELL, Register of Wills.



## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ROBERT B. POTTER

No. 8332. In Eq.

ELEANOR ROBERTA POTTER ET AL. }  
James Lowndes, the trustee to sell, having reported that he sold to Robert B. Potter, for \$6,200, lot "A," of original lots three (3), four (4) and (5), in square seventy-eight (78), situate in the District of Columbia, with the improvements thereon:

It is, this 22d day of December, 1882, ordered, adjudged and decreed that the said sale be and it is hereby ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, 1883. Provided, that this decree be published once a week for three successive weeks before the 24th day of January, A. D. 1883, in the Washington Law Reporter.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 62-3 R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Chedak, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.

B. T. HANLEY, Solicitor. 62-3 FLAVIUS J. WATERS, Executor.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Brooke Howard, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 13th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of December, 1882.

ANNA S. O. HOWARD, Executrix,  
476 Pa. Ave., n. w.

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Hiram Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.

H. B. MOULTON, Solicitor. 61-3 JOHN STEWART, Administrator.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edmund B. Mouniz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1882.

LOUISA M. BISHOP, Administratrix  
GORDON & GORDON, Solicitors. 60-3

## THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Willy Aulick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of December, 1882.

GEO. M. ROBESON,  
SAM'L V. NILES,  
Administrators.

60-3

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary A. Pearce, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.  
WM. T. PEARCE, Administrator.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

NOTLEY ANDERSON, Complainant.

No. 8,238.

HENRY W. HOWGATE ET AL. Defendants.

Henry Wise Garnett, trustee in this cause having reported the sale of sub-division lots two hundred and nine (209), and two hundred and ten (210), in Henry W. Howgate's sub-division (recorded in the Surveyors' Office, in Book eleven (11), at folio four (4)), of lots one hundred and eight (108), to one hundred and twelve (112), inclusive, of Patterson's sub-division of part of square numbered two hundred and six (206), as the same is laid down on the plat of Washington City, District of Columbia, to James E. Waugh, for the sum of forty-two hundred dollars (4,200).

It is, this 19th day of December, A. D. 1882, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 19th day of January, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 61-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia the 20th day of December, 1882.

THE PRESIDENT AND DIRECTORS OF GONZAGA COLLEGE

No. 8,402. Eq. Doc. 22.

OVERTON CARR ET AL.

On motion of the plaintiffs, by Mr. G. E. Hamilton, its solicitor, it is ordered that the defendants, the unknown heirs of Benjamin G. Orr, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 61-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. December 19, 1882.

In the case of William B. Webb, Executor of John Purdy, late of the District of Columbia, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 19th day of January, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouch'd; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 61-3 H. J. RAMSDHELL, Register of Wills.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia,

HENRIETTA BUTLER

No. 7908. Equity.

LEONIDAS SCOTT.

Robert B. Lewis and James H. Smith, trustees, having reported the sale of lot No. 63, in square numbered 367, situate in the city of Washington, D. C., to Haloor Nelson, for the sum of 70 cents per square foot, amounting in the aggregate to \$2,340.

It is, this 20th day of December, A. D. 1882, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 20th day of January, A. D. 1883. Provided, a copy of this order be published in the Law Reporter of Washington, D. C., once a week for three successive weeks before the said 20th day of January, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice, &c.  
True copy. Test: 61-3 R. J. MEIGS, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - January 13, 1883

GEORGE B. CORKHILL - - - EDITOR

## Wigs and Gowns.

Woman, says Addison, quoting from a forgotten Greek pedant, is a creature that delights in decorating itself; and the essayist devotes a whole paper in the *Spectator* to establishing that in all ages she has taken more pains than man to adorn the outside of the head. The ceremony of yesterday tends a little to modify this exclusive belief. The Lord Chief-Justice in his S. S. collar, the judges in their full-bottomed wigs, the sergeants in their scarlet gowns, and the Queen's counsel in their silk attire, put in, all of them, such an appearance as showed that they valued decoration generally, and were not quite careless even about the outsides of their heads. Argument and case law lay, no doubt, in tight packed layers within, but outside it the goat-hair and the horse-hair in well-trimmed rows made the old men look wise and some of the young men look handsome. But in truth it would be an injustice to the law to ascribe to vanity what is chiefly the legacy of past centuries. It was said that no man ever looked so wise as Lord Thurlow when he had his wig on. But Lord Thurlow put his wig on, not in order to look wise, but because whole generations of chancellors had worn wigs before him. Law is the most conservative of all the professions; innovation and reform have been busy with it, and yet it is still padded around with mysteries, fictions and forms, which the others have long ago rejected. There is a legend yet whispered about and fondly believed in at Westminster, that on the 22nd July, 1868, so great was the heat the judge of the Divorce Court took his seat on the bench without his wig. The following day several young barristers followed this revolutionary precedent, and unless the mercury had fallen the profession would have been jeopardized. The noble independence of the law, and its proud superiority over convenience and common sense, came out in strong contrast on that occasion to the selfishness of another bench. It was Bishop Blomfield, the late Primate's predecessor, who asked the King's permission for a bishop to dispense with a wig. The leave was easily given; indeed, according to one version, it was volunteered jocularly. The bishops went over one by one, voted uncovered, preached in their own hair, and have left us nothing

but the sketch of Dr. Syntax and the portrait of Bishop Burnett to remind us of the days when law and divinity had goat's-hair in common. But even at the bar there are signs of surrender. When the judges were banked upon their platform in the Central Hall yesterday morning their wigs were not uniform. Some were all white, and in others the white was relieved by a circular recess constructed just over their organ of benevolence. Law is the perfection of common sense, and for all legal attire there is an adequate cause. This black patch is the coif, and it shows that the judge who wears it holds the degree of sergeant-at-law. Once it was a skull cap worn by a knight under a helmet. That was, however, many centuries ago. In more modern times—a little before 1500 A. D.—renegade clergymen used to do barristers' work and take barristers' fees. A canon, it is true, forbade them to act as advocates in secular courts, but even then clergymen were contumacious. They pleaded for their client in the teeth of canonical prohibition, and they used the coif to hide the tonsure. One picturesque old annalist, writing about the year 1400, describes how a certain advocate, who was a sergeant, having been proved guilty of the grossest malversation, was sentenced to death. He pleaded his benefit of clergy, and untying the threads of his coif, disclosed the tonsure. The plea, however, was no bar to the action of the executioner, and he was hurried off from the judgment-seat to the gallows. For six centuries the sergeants remained in undisturbed possession of that little black patch. They had their own rights and their own inn. Queen's counsel were of mushroom growth compared to them; their first silk gown was almost of modern date. Francis Bacon (afterwards Lord Verulam) assumed it some time in the sixteenth century. The sergeants dated with the thirteenth. And for centuries the judges, before they had the honor of being made judges, had the honor of being made sergeants; and so it was they called the sergeants their brethren; and so it was they too had the little black patch on the summits of their wigs. But legislation has latterly been very cruel to them. The Judicature act has extinguished the order, and the forensic wig-maker has sold off all his coifs. The old judges created before the year 1873 preserve the old custom, but all subsequent judges have their white hair unspotted when they take their seats upon the bench.

Gowns are of older date than wigs. Indeed, at one time our bar is said to have worn the toque, not very different from what French advocates carry to the present day, or what

Miss Terry had on when she appeared as Balthasar before the Doge. But lawyers always wore robes, and there was formerly more variety, or at least more etiquette, in their adoption. The customs exist, but they are not adhered to. The variety in a judge's robes connects his position with its origin. It was a clerical vestment, and the colour of it was prescribed by the Calendar. The red gowns were to be worn on red-letter days, the violet on such occasions as the church directed, but during a criminal trial, the judge always wore red. For the prisoner in the dock, Black-Monday was always a red-letter day. Even the sergeants once used to wear scarlet in court. To the generation of young barristers, it will have been a surprise to have seen the few of the old order who yet remain robed yesterday in red. But there are many men at the bar, who can recollect the sergeants in the old courts attired exactly as they were attired when the Queen opened the new courts. The sergeant robed in red was a dignified figure in old legal history. And he had a singular privilege. He had the right to remain with his coif on in the presence of royalty, and needed not to take it off even when in conversation with the King. Old court treatises lay this down side by side with the singular but well-known rights of Lord Kinsale, and the more singular privilege of the chief of an old Italian family, to ride into church with armour and helmet on. The gowns worn by the bar have changed little, if at all, in the lapse of centuries. They still illustrate the close connection between the churchmen and the lawyers, as the white tie worn in the equity courts, and the title of "Master," still preserved by the benchers, and analogous to the *maitre* of the French tribunals, bring us back to the period when al-learning was in the hands of the clerics. In deed, the antiquity of the gown may be tested by a legal fiction that has been bound up in its trimming. The barrister had no right to his fee. He could not bargain for it or sue for it. He could scarcely even receive it. The rule was very strict, though a fiction was found to relieve him from its hardship; there being behind his gown—and there hangs there still—a craftily constructed pouch with a wide funnel and a narrow orifice. The funnel was wide enough to admit a suitor's hand, and the orifice was narrow enough to retain the suitor's guineas. Modern usage has dispensed with the employment of the purse; but the counsel's clerk still is interposed as a kind of buffer to protect the man of law from direct contact with his client's money, and in a general way to secure the proprieties of the profession.—*Pall-Mall Gazette*.

#### Book Notice.

A TREATISE ON THE LAW OF DAMAGES. Embracing an Elementary Exposition of the Law, and also its Application to Particular Subjects of Contract and Tort. By J. G. Sutherland. Vol. 2. Chicago: Callaghan & Co. 1882.

In a former number of the REPORTER, we referred to the appearance of the first volume of this new, comprehensive and excellent work on the subject of damages, and noticed the heads of the subject treated by the author in that volume.

We are now in receipt of the second volume, which confirms the favorable impression produced by the first, and is in itself a complete treatise upon the particular branches of the law of damages discussed in it. It contains 661 pages, including a copious index and table of cases.

This volume is devoted to a consideration of bonds and penal obligations, notes and bills, vendor and purchaser, contracts for services, contracts for particular works, and suretyship.

#### Service of Process on the United States.

A bill of foreclosure was presented to the United States District Attorney last month with a request that he would enter an appearance for the Government. The United States had recovered a judgment which was a lien upon premises which had been sold under a prior mortgage, and this was a bill of strict foreclosure. The bill contained the prayer which is found in Dickinson's Precedents, on page 100, "may it please your honor that the District Attorney of the United States, being attended with a copy of this bill, may appear and put in an answer thereto, and stand to and abide by such order and decree in the premises as to your honor shall seem meet, etc. The district attorney declined to enter an appearance, saying he had no right to do so. The chancellor is of course without authority to compel him to appear, and the prayer of the bill is, on the face of it, a vain one, as addressed to the chancellor. The case referred to in Dickinson's Precedents for the form is *Elliott v. Van Voorst*, 3 Wall., Jr., 299. This however has been overruled, and it has repeatedly been held that the United States cannot be made a party defendant in any suit, and that the district attorney has no authority to enter an appearance. See *U. S. v. Eckford*, 6 Wall., 487, and the recent case of *Bush v. U. S.*, which appeared in the Reporter of November 22d, 1882, Vol. 14, p. 641.

—*N. J. Law Jour.*

# Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

MOSES SOLOMON vs. SARAH GARLAND.

AT LAW. No. 20,682.

Decided November 20, 1882.  
The Chief Justice and Justices COX and JAMES sitting.

1. The effect of sections 727 and 728 of the Revised Statutes relating to the District is to render a married woman competent to act in her character of proprietor of her separate estate, just as any other proprietor may act. Not only may she give away, sell, lease, or lend her separate property, but she may charge it with any kind of lien, and she may do so by the same acts or contracts which would operate in the case of any other proprietor.
2. In addition to the absolute contract power given her by these two sections, in cases where her separate property was the subject-matter of the contract, Congress went further and gave her in the next section a like power in certain other defined cases where the subject-matter of the contract was not her separate property, but something "having relation" to it, although it was a matter in which, previous to the contract, she had no interest or right.
3. The question whether the alleged contract is about a matter having the required relation to her separate property is a question of law and addresses itself to the court.
4. That is not, within the meaning of the statute, a matter having relation to her separate property, when there is a *total absence* of all right to claim as her property, the property to which the subject-matter of the contract is alleged to have relation.
5. But this ruling is not to be taken as meaning that, in ascertaining the existence of a separate property to which the matter of contract must have relation, the question whether her title is a good and valid one will be tried.
6. The furnishing of a house belonging separately to a married woman is a matter having relation to her separate property within the meaning of the statute.
7. An executory agreement by a married woman to purchase a house is binding upon neither party. She will not, therefore, by virtue of such agreement be the owner of a "separate estate" in relation to which she may make a contract.
8. Whether a married woman who takes a lease of a house, and thereby acquires a term, may contract for the furnishing thereof, as a matter having relation to her property in the term, *quære*.
9. A married woman being in the occupation of a house and premises, it was contended that, as she could not be dispossessed by the owner without thirty days' notice, she was therefore the owner of a term in the premises to that extent; that such a term was her separate property and that the purchase of furniture to furnish this house was a matter having relation to her right to possess it for this term.

*Held*, That the thirty days' notice is a limitation upon the landlord's remedy, and the occupation on sufferance has not the quality of a term; it is not assignable; it has none of the traits of property, and therefore cannot be treated as the separate property of a married woman.

10. The statute gives to a married woman power to make certain contracts when she actually has separate property, but she is not given that power by merely pretending to have such property; the question is one of legal capacity, and a fraudulent pretense that the capacity exists cannot create it. The doctrine of estoppel has, therefore, no application to a case of that kind.

11. A married woman made a purchase of furniture. The contract was on a matter which had no relation to her separate estate, but she promised to pay for the goods out of the rents derived from a house which was her separate property.

*Held*, that at law this was a mere promise to pay money, and that a married woman's *promise to pay* for that which does not relate to her separate property cannot be enforced. Whether such a promise would operate as a charge upon her rents and could be enforced in equity, *quære*.

## STATEMENT OF THE CASE.

### MOTION for a new trial on exceptions.

This was an action to recover of the defendant, a married woman, a balance due upon a purchase of furniture by her. The declaration alleged the ownership by defendant as her sole and separate estate, of a house on Sixth street in the city of Washington, and a purchase of furniture by her from plaintiff for use in said house upon a promise of the defendant to pay for same out of her separate estate. Upon the trial it was shown that the defendant was a married woman living with her husband and owning in her own right in fee simple, as her separate estate, the house and premises No. 107 6th street, in Washington. In the early part of 1877 there were large dealings in furniture between plaintiff and defendant, and when the account was settled a balance of \$160 was found due the plaintiff.

In July, 1877, defendant went to plaintiff's store and asked a further credit. She stated at the time that she was the owner of a house on Corcoran street and of other property; that she received \$300 a month rent for her 6th street house, and that she would pay the plaintiff \$50 a month out of such rent until her account was squared.

On these representations, goods of the value of \$311.27 were then sold to her. Part of the goods thus sold, comprising a Brussels carpet and some minor articles charged at \$125, were delivered at the 6th street house, the balance was delivered at the house on Corcoran street.

It was shown that at the time of the sale and delivery of the furniture, the defendant

had a parol agreement for the purchase of the Corcoran street house, and was in occupation thereof, but the purchase of the property was never perfected by her. Subsequently to July, 1877, the defendant paid on the account \$320, leaving still due \$151.27, for which this suit was brought.

¶ This being all the evidence offered, the defendant thereupon prayed the court to instruct the jury that:

"The plaintiff is not entitled to recover in this suit for any furniture sold for the use of, and delivered at the house on Corcoran street, there being no proof that said house was the separate estate of the defendant."

Which prayer being refused the following was then offered:

"That the purchase of household furniture by a married woman, living with her husband, which is not necessary to the beneficial enjoyment of her then existing separate estate, is not a contract in a matter having relation to her sole and separate estate."

This was also refused as was likewise the following:

"That a married woman living with her husband, cannot render herself personally liable on an oral contract for the purchase of household furniture which is not necessary to the beneficial enjoyment of her previously existing separate estate."

All the prayers of the defendant being refused, the court then charged the jury substantially:

"That if they believed from the evidence that she bought the goods on the credit of her separate estate, and so stated at the time, it is immaterial where they were delivered; and if the defendant, being the owner of separate estate, purchased this property, stating to the person from whom she bought, that it was for her separate estate, it was enough and she is responsible in this action. She is just as liable for a false and fraudulent statement as for a true one."

The jury then found for the plaintiff for the amount claimed, and the case came to the General Term on exceptions by the defendant to the refusal of the court to instruct the jury as prayed.

BIRNEY & BIRNEY for plaintiff.

HAGNER & MADDOX for defendant:

This case presents the question whether the purchase of household furniture by a married woman, on open account, with a promise to pay for same out of the rents of a house owned by her, in her own right, as a separate estate, creates an obligation on which she will be liable in a suit at law. The case does

not come within the requirements of the married woman's act, as expounded by this Court in *Harmon and Boswell v. Garland*, Wash. Law Rep., March 9, 1881. There, in the verdict, the jury found that "said furniture was bought and used by defendant for furnishing a house forming part of her separate estate, which house so furnished, said defendant thereafter rented." On this state of facts, the Court says: "We think it a fair inference from the verdict in this case, that the defendant, in order to rent the house to advantage, had to furnish it." In other words, that it was necessary for the *beneficial enjoyment of her then existing separate estate*.

There was no room for such an inference here. The evidence offered, showed simply a purchase of furniture and a delivery of same—part at a house on Sixth street, the balance at a house on Corcoran street. There was not a scintilla of proof that the defendant at the time of the various purchases, stated even that they were made for the purpose of furnishing houses belonging to her. It cannot be inferred from this that the furniture was necessary "in order to rent her houses to advantage." *Non constat* that the purchases were not made for the purpose of engaging in business as a trader in furniture. For these reasons it follows that there was error in refusing to instruct as prayed in the second and third prayers.

The case would rather fall within the rulings as laid down in *Rich v. Hyatt*, 3 MacArthur 536, where it was held that the statute confers on married women no new rights in respect of the means of acquiring property, and that it does not authorize her to make an executory contract for the purchase of another's estate. Or in *Schneider v. Garland*, (Wash. Law Rep., March 8, 1882,) where it was held that it is not enough to render her liable at law to say that the goods were sold on the faith and credit of her separate estate and on her promise to pay out of said estate. The same ruling was made in *McDermott Bros. v. Garland*, Wash. Law Rep., Vol. X., No. 26.

The Court's charge to the jury was almost identical with that in *Schneider v. Garland*, *supra*, with the additional infirmity that there was in the evidence adduced no proof that she stated to the person from whom she made the purchase, that "it was for her separate estate." The facts disclosed no such statement.

The charge also touches upon the question of estoppel, and the same point was raised by defendant's first prayer.

It would seem that estoppel, either by deed or *in pais*, does not apply to a married woman,

she being supposed to be under the compulsion of her husband and therefore unable to assent to a contract. *Lowell v. Daniels*, 2 Gray, 168; *Bank v. Lee*, 13 Peters, 119; *Kun v. Coleman*, 89 Pa. St., 299; *Adelphi Loan Ass. v. Fairhurst*, 9 Ex., (W. H. & G.) 422.

It certainly could not be carried to the extent of creating a separate estate by estoppel, which is necessary to meet the exigencies of this case. This would be a veritable legal absurdity.

But the doctrine of estoppel has little or no application to the case. It was in evidence that the defendant, at the time of asking a further credit, stated to the plaintiff that she was the owner of a house on Corcoran street. Ordinarily it would still have been necessary for the plaintiff, in order to maintain his suit, to show that this house was her sole and separate property within the purview of the statute. In this he not only failed, but actually showed that the defendant never had the legal title to the property. Further than this, there is no averment in the declaration, nor was there anything in the proof to show, that defendant, at the time of purchase, told the plaintiff that the furniture was intended for use in the Corcoran street house. This action is brought only for goods sold for the use of and delivered at the 6th street house. Any question over furniture delivered at the Corcoran street house was *coram non judice*.

Mr. Justice JAMES delivered the opinion of the court.

It appears by the bill of exceptions that the defendant is a married woman, living with her husband; that, at the time of the transaction on which this suit is based, she owned, as her separate estate, a house and lot on Sixth street, in Washington; that in the early part of the year 1877 there were large dealings in furniture between plaintiff and defendant, and that upon settlement of that account a balance of \$160 was due to plaintiff; that in July of that year defendant applied to plaintiff for a further credit; that she stated to plaintiff at that time that she was the owner of a house on Corcoran street, in this city, and of other property; "that she received three hundred dollars a month rent for her Sixth street house, and that she would pay the plaintiff fifty dollars a month out of such rent until her account was squared;" that "on these representations, goods of the value of \$311.27 were then sold to her;" that "part of the goods thus sold, comprising a Brussels carpet and some minor articles, charged at \$125, were delivered at the Sixth street house, and the balance was delivered at the house on Corcoran street."

"It was shown that at the time of the sale and delivery of the furniture, the defendant had a parol agreement for the purchase of the Corcoran street house, and was in occupation thereof, but the purchase of the property was never perfected by her. Subsequently to July, 1877, the defendant paid on the account \$320, leaving still due \$151.27." It is stated by the bill of exceptions, that this was the whole of the evidence offered at the trial.

Thereupon the defendant prayed the court to instruct the jury: 1st. That "the plaintiff is not entitled to recover in this suit for any furniture sold for the use of and delivered at the house on Corcoran street, there being no proof that said house was the separate estate of the defendant." 2nd. That "the purchase of household furniture by a married woman, living with her husband, which is not necessary to the beneficial enjoyment of her then existing separate estate, is not a contract in a matter having relation to her sole and separate estate." 3rd. That "a married woman, living with her husband, cannot render herself personally liable on an oral contract for the purchase of household furniture which is not necessary to the beneficial enjoyment of her previously existing separate estate." All of these prayers were refused and exceptions were taken.

After refusing these prayers, the court charged the jury substantially:

"That if they believed from the evidence that she (the defendant) bought the goods on the credit of her separate estate, and so stated at the time, it is immaterial where they were delivered; and if the defendant, being the owner of separate estate, purchased this property, stating to the person from whom she bought, that it was for her separate estate, it was enough, and she is responsible in this action. She is just as liable for a false and fraudulent statement as for a true one." To this instruction defendant duly excepted.

It is convenient to state generally the conclusions of the majority of the court upon the facts presented by the bill of exceptions, and to consider afterwards how far the rulings at the trial conform to them.

Section 727 of the Revised Statutes for this District define the *status* of what is there called the "sole and separate property" of a married woman, and section 728 states her power of control over it. The effect of one of these provisions is to absolve the property itself, and of the other to absolve the wife, as owner of it, from the control of the husband. She is made competent to act, in her character of proprietor, just as any other proprietor may act. Not only may she give away, sell,

lease, or lend her separate property, but she may charge it with any kind of lien, and she may do so by the same acts or contracts which would operate in the case of any other proprietor. If the act had stopped there, a married woman's contract power, absolute and complete as it would have been within its limits, would nevertheless have been strictly limited to control over the *res* known as her separate property; and she would have remained, in all other respects, under the disabilities imposed upon her by the common law. But Congress went further, and, in addition to absolute contract power in cases where her separate property was the subject-matter of the contract, gave her, in the next section, a like power in certain other defined cases, where the subject-matter of the contract was not her separate property, but something "having relation" to it. In respect to this matter, also, she was empowered by the statute to make a contract although it was a matter in which previous to such contract, she had no interest or right. The common law was altered by the statute only to this extent, and in matters not having such "relation," married women in the District of Columbia were left as they had been placed by the common law. As this is a question of legal capacity, the question whether the alleged contract is about a matter having the required relation, is necessarily a question of law, and addresses itself to the court. In the cases which have heretofore arisen under this statute, this question has been so treated. We take the rule, then, to be this, that when the statute gives to a married woman absolute contract power in a matter "having relation to her sole and separate property," it contemplates, first, the existence of something which is capable of being regarded, either at law or in equity, as her sole and separate property; and, secondly, that the matter shall have relation to that property. We do not mean that, in ascertaining the existence of a separate property to which the matter of contract must have relation, the question whether her title is a good and valid one will be tried. It is enough to say for the present that there must not be a total absence of all right to claim as her property the property to which the matter in contract is alleged to have relation. In such case the matter claimed to have relation cannot be held, within the meaning of this statute, to be a matter having relation to her sole and separate property. It is obvious that this power to contract in relating matters was given in order that she might have the largest and completest enjoyment of her actual property. In order that

she should have this, it was not enough that she should merely be able to dispose of that property; she must be able to make contracts which secure to her the full use and enjoyment of it while she holds it. But the incidental or relating power is not to be construed to apply where the principal power cannot. In giving her power to contract in matters having relation to her separate property, Congress cannot have intended that she might exercise it in cases where she had nothing over which she could exercise the disposing power given by the previous provision of the same statute. It could not have been intended, by this additional contract power, to secure or enlarge her enjoyment of what she could not pretend to have at all. The whole statute must, of course, be construed together; and as the provision giving her absolute control over her separate property contemplates the actual existence of such property, so the provision giving her power to contract in matters relating thereto contemplates the same thing. Such matter must relate to something which comes within her power of direct control. Let us apply these principles to the facts of the case before us.

Undoubtedly the furnishing of a house belonging separately to a married woman is a "matter having relation" to her separate property within the meaning of this statute, and this court has so held. Without power to contract in such a matter she could not enjoy, as the statute intends she shall, the full benefit of proprietorship. She could own and sell, but could not use, her house. But does the defendant's purchase of furniture for the Corcoran street house come within this principle? Can that house be treated as in any sense her property, so that another matter may have the relation to it intended by the statute? Did she acquire even a pretence of title by the alleged executory contract for its purchase? We are of opinion that the so-called contract was not, as to either party, a contract at all.

The statement of the bill of exceptions, that the defendant "had a parol agreement for the purchase of the Corcoran street house, and was in occupation thereof," is imperfect. It does not show that she had paid for the house and only lacked a conveyance to perfect her title. We must suppose, therefore, that there was only a promise on one side to sell and on the other to buy, and that Mrs. Garland's promise to purchase was the consideration of the promise to sell. This presumption is confirmed by the fact that the plaintiff took pains to prove that she was in possession. It is not shown that she entered



under the agreement of sale, and it is immaterial whether she did so or not. Part performance of a contract which both parties are competent to make may relieve the party performing of the operation of the statute of frauds, and thus enable him to insist upon performance on the other side; but this defendant's part performance of a promise which the law disabled her to make would not bind her to a complete performance or make her promise valid. She could not become a legal promisor by acts if she could not by a written and express promise. This would be to make her competent to promise, because she pretended to have that power. Legally, then, there was no promise to purchase the Corcoran street house; the promise to sell was without consideration and could not be enforced. In other words, there was no contract for the sale and purchase of the Corcoran street house. So familiar a principle hardly calls for the citation of authorities, and we shall refer to but one. "Courts of equity," says Story (Eq. Jur., 787), "will not carry into specific execution any merely *nude pacts* or voluntary agreements, not founded upon some valuable or meritorious consideration; nor between parties not *sui juris* or competent to contract, as infants and *femes covert*." See, also, Story's Eq., sec. 723.

It is objected that, in applying this clause of the statute, the court will not consider whether the property, to which another matter is said to relate, is held by a *good title*. That proposition, as stated, is correct, but it is not involved in this case. This defendant had no pretence of title, inasmuch as her claim of equitable title must rest upon an executory contract which the law disabled her to make, and which she could not possibly enforce. She was simply a stranger to what is alleged to have been her separate property.

A pretence of separate property has been made, however, upon another ground. It was suggested that, being lawfully in possession, she could not be dispossessed by the owner without thirty days' notice; that she may be said, therefore, to have a term in the premises to that extent; that such a term was her separate property, and that the furnishing of the house had relation to her right to possess it for this term. It is not necessary to consider here whether a married woman who takes a lease of a house, and thereby acquires a term, may contract for the furnishing of that house, as a matter having relation to her property in the term. It is enough to say that no term is shown here. The thirty days' notice is a limitation upon the landlord's remedy, and the occupation on sufferance was not the

quality of a term. It is not assignable; it has none of the traits of property, and therefore cannot be treated as separate property of a married woman.

It was also urged in argument that, as the furniture for the Corcoran street house was sold on the strength of her assurance that it was her separate property, she is estopped to deny such ownership. We have already said that this statute gives to a married woman power to make certain contracts when she actually has separate property, and has not given it when she merely pretends to have such property. To say that she must be deemed actually to have separate property by reason of an estoppel of this kind, is merely a misapprehension of the principle of estoppel as applied to estates. This is a question of legal capacity, and a fraudulent pretence that the capacity exists cannot create it. The case in which she has power to incur a personal obligation does not come into existence by operation of an authorized attempt to incur it.

We have said that a married woman may charge her separate property with a lien, and that she may do so by the same acts or contracts which would operate in the case of any other proprietor; and it has been suggested that, upon this principle, the defendant's promise to pay fifty dollars a month out of the rents of her Sixth street house may be treated as an appropriation of, was charging a lien upon, those rents, in consideration of the sale to her. If that be so, such a charge cannot be enforced in this action for the price of the goods. At law such a promise can only be treated as a mere promise to pay money; and a married woman's mere *promise to pay* for that which does not relate to her separate property cannot be enforced. Whether a charge upon defendant's rents could be enforced in equity, we need not decide.

With these views we must reverse the judgment.

CARTTER, C. J., dissenting:

While I have no disposition to demur to the law as laid down in this opinion, in general terms I agree with brother Mac Arthur in his treatment of the case below. I think he was right.

There are two things unembarrassed in this case, and not inconsistent with each other. One is, that the defendant was a *feme covert* with separate estate. There is no trouble about this; where it was and what it was is another question. And she had been advanced, under the law, to the condition of a *feme sole*, in dealing with her separate estate. That proposition is also unembarrassed. The plaintiff in this case sold her this furniture



upon the credit of her separate estate, and she took it—it was delivered to her and she took a part of it to her house upon Sixth street and a part of it to her house upon Corcoran street—whatever title she held it by. She said it was her separate property, and upon the faith of that declaration she got the furniture in question, and I hold that the legal logic involved in the power to make a contract makes the party to it amenable to all the intendments of the law, whether male or female, *feme covert* or *feme sole*; that the philosophy of privilege and of conduct necessarily blends with the administration of justice when you have a party capable of making a contract; that there is no new set of rules to control rights of *femes covert* enlarged to the condition of *femes sole* as peculiar to them, but they assume with their right all of the obligations of the law, and, to the parties with whom they contract, as effectually as though they were of the masculine gender. It is a masculine act; it is the exercise of masculine authority over property, and it never entered into the contemplation of the law that there was to be a new mode of administering rights under it. This being so, this woman applied to the plaintiff to buy his goods for and on account of her separate estate; she got them; she has them now; and the question is, whether they shall be charged, not upon her husband, but upon her separate estate, that has been enlarged and enriched out of the substance of the plaintiff. It has become a very interesting issue in this case what the precise degree of the title to her property is, whether equitable or legal, valid or void, and we are introduced into an equity examination to determine the real character of the title. Now does this law contemplate any such thing? Does it contemplate, in a transaction over personal property, where one party applies to another to buy or sell, that the court, in ascertaining whether she is liable as a *feme sole* or not, shall ascertain whether the "t's" are crossed in the deed that constitutes the title to her property, or whether it is by leasehold, or whether it can be enforced in a court of equity? She said it was her property and she was in the occupation of it as a domicile; the furniture went to that domicile and was employed by her there; why not believe her? The law would compel you to believe a man, why not believe a *feme sole*? The law would not permit a man, after buying property on account of other property, to say to the party that he purchased it of, my title is not very good to this property; in fact, I haven't got any; it is only a possessory title that I have, and I am liable to be turned

out at any time by process of the law. Now the law would not listen for a moment to a man with that plea; the law would say to him, you said it was your property; you lived in it and occupied it; you took the plaintiff's goods into it as your separate property, and the law will not permit you to deny it. Now I cannot discover, with all the reflection I have given the subject, why the same rule should not apply to this case. I do not understand why a woman should be permitted to deny with impunity when a man may not.

I think the doctrine of estoppel is applicable in this case, although it may be that the justice below laid down the rule a little too broadly, for this court has said—and I think properly—that the contract which a *feme covert* is enabled to make must relate to her separate estate. The purchase of furniture would relate to it; the purchase of a halter for a horse or oats to feed him would relate to it; tools for a farm would relate to it, because they enter into the enjoyment—the occupation of the property. But it seems to be indicated in the charge of the court below, that it is only necessary to show that she said the purchase was on account of her separate estate, and that she would be estopped by that declaration. Perhaps this is carrying the rule beyond what has been held by the court, and beyond the intendment of the statute; but it did not effect the merits of this case, for here you have a separate estate revealed to the court. It matters not whether it was on Sixth street or Corcoran street where one part of this furniture went and where another part went, here you have the property in *esse*. I care not what the estate, whether it is a possessory estate or a leasehold estate, provided it is a separate estate, and where that is shown then any declaration of the party inconsistent with the existence of that estate comes with all the obligation that it does upon anybody else. These are the considerations that advise my dissent to this opinion.

**A LICENSEE CANNOT SUE FOR AN INFRINGEMENT.**—Judge Wallace, in the case of *Ingalls v. Hine*, U. S. Circuit Court for the Southern District of New York, has decided that an agreement whereby the patentee granted to the complainant the sole and exclusive right to sell the patented articles within certain specified territory, was not a transfer of an individual part of the whole patent or of the exclusive right of the whole patent for a particular territory. It is simply a license and does not entitle the complainant to bring suit in his own name, the patentee not being a party to the suit.

## United States Supreme Court.

NO. 1086.—OCTOBER TERM, 1882.

ALBERT GRANT, Appellant,  
vs.

THE PHENIX MUTUAL LIFE INSURANCE CO.  
*Appeal from the Supreme Court of the District  
of Columbia.*

*On Motion to Dismiss.*

1. A decree to be final, within the meaning of that term as used in the acts of Congress giving the court jurisdiction on appeal, must terminate the litigation of the parties on the merits of the case, so that if there is an affirmance here, the court below would have nothing to do but to execute the decree it had already rendered.
2. A decree in a foreclosure suit which settles all the rights of the parties, and leaves nothing to be done but to make the sale and pay out the proceeds, is a final decree for the purpose of an appeal, but to justify such a sale without consent, the amount due upon the debt must be determined: until this is done the rights of the parties are not all settled. Final process for the collection of money cannot issue until the amount to be paid, or collected by the process if not paid, has been adjudged.

Mr. Chief Justice WAITE delivered the opinion of the Court.

This is an appeal from the following decree in a suit for the foreclosure of certain deeds of trust in the nature of mortgages to secure the payment of money:

"The cause came on to be heard upon the pleadings and proofs therein, and having been submitted by the counsel of the respective parties and duly considered by the court, and it appearing to the court that said defendant, Albert Grant, is not entitled to any relief under his cross-bill in this cause; that the plaintiff is the holder and owner of the several obligations of said Grant, secured by the deeds of trust on the real estate prayed in the original bill of complaint herein to be sold for the payment of the indebtedness thereon, and mentioned and set forth in the 3d, 4th, 5th, 6th, 7th and 8th paragraphs of said bill; that said Grant has made default in the payment of his said obligations, on which he is indebted to the plaintiff in large sums of money, with long arrearages of interest; that said Grant has not paid taxes on said real estate for a number of years, and the same are in arrears for upwards of twenty thousand dollars; that said indebtedness of said defendant, Grant, to the plaintiff largely exceeds the value of said real estate, and that the plaintiff has no personal security for its said debt; it is this 2d day of March, A. D. 1882, ordered, adjudged and decreed that this cause

be, and the same hereby is, referred to the auditor of the court to state the account between the plaintiff and the defendant, Albert Grant; the amount due under said several deeds of trust on said real estate prayed to be sold in said bill; the amounts due said judgment and mechanic's lien creditors referred to in said bill; whether the same are liens upon any of said real estate; the relative priorities of the claims of said creditors and the plaintiff, and the value of the said real estate,—all from the proofs in this cause, except as to said mechanic's lien; and report the same to this court. And said auditor shall further ascertain and report to this court the amount due for taxes in arrears on said real estate, and whether the same or any part thereof has been sold for taxes, and if so, when, for what taxes, for what amount, and to whom."

To this was added an order appointing a receiver to take possession of the property, make leases, &c.

A motion is now made to dismiss because the decree appealed from is not a final decree.

The rule is well settled that a decree to be final, within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeal, must terminate the litigation of the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the decree it had already rendered. This subject was considered at the present term in *Bostwick v. Brinkerhoff*, where a large number of cases are cited. It has also been many times decided that a decree of sale in a foreclosure suit, which settles all the rights of the parties and leaves nothing to be done but to make the sale and pay out the proceeds, is a final decree for the purposes of an appeal. *Ray v. Law*, 3 Cranch, 179; *Whiting v. Bank*, 13 Pet., 15; *Bronson v. R. R. Co.*, 2 Bl., 581; *Green v. Fisk*, 103 U. S., 520. But in *Railroad v. Swasey*, 23 Wall., 409, it was held that "to justify such a sale, without consent, the amount due upon the debt must be determined. . . . Until this is done the rights of the parties are not all settled. Final process for the collection of money cannot issue until the amount to be paid or collected by the process, if not paid, has been adjudged." In this the court but followed the principle acted on in *Barnard v. Gibson*, 7 How., 656; *Humiston v. Steinthorp*, 2 Wall., 106; *Crawford v. Points*, 13 How., 11, and many other cases.

The present decree is not final according to this rule. It does not order a sale of the property. It overrules the defense of the appellant as set forth in his cross-bill, and de-

clares that the appellee is the holder and owner of the debt secured by the deeds of trust, but refers the case to an auditor to ascertain the amount due upon the debt, the amount due certain judgment and lien creditors, the existence and priorities of liens, and the claims for taxes. It is true that the court finds the amount due the appellee largely exceeds the value of the property, but this is only as a foundation for the order appointing the receiver. If in point of fact it is not true, the finding will not conclude the parties in the final closing up of the suit. The order for the delivery of the property is only in aid of the foreclosure proceedings, and to subject the income, pending the suit, to the payment of any sum that may in the end be found to be due. If anything remains, either of the income or of the proceeds of the sale after the mortgage or trust debts are satisfied, it will go to the appellant, notwithstanding what has been decreed. There is no order as in *Forgay v. Conrad*, 6 How., 201, *Thompson v. Dean*, 7 Wall., 346, and other cases of a like character, adjudging the property to belong absolutely to the appellee, and ordering immediate delivery of possession. In *Forgay v. Conrad*, supra, which is a leading case on this question, it was expressly said by Chief Justice Taney, (p. 204), that the rule did not extend to cases where property was directed to be delivered to a receiver. The reason is that the possession of the receiver is that of the court, and he holds, pending the suit, for the benefit of whomsoever it shall in the end be found to concern. Neither the title nor finally be rendered against it.

The rights of the parties are changed by his possession. He acts as the representative of the court in keeping the property so that it may be subjected to any decree that shall

It follows that the appeal must be dismissed; and it is so ordered.

## Land Department.

Furnished by D. K. SICKELS.

### Mining Claims.

*Question of Annual Expenditures upon a Claim after Date of Entry.*

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, Dec. 14, 1882.

H. H. JUDSON, Esq.,  
Leadville, Colorado.

SIR: I am in receipt of your letter of 8th instant, urging the necessity of an amendment to the mining statutes to relieve applicants from the payment for annual assess-

ment work, for the purpose of holding their claims after date of application from, and prior to the issue of patent, on the ground that such requirement, pending the determination of adverse suits, is onerous and ought not to be enforced.

Under the law as construed and the established practice of the Department it has been held unnecessary to continue such work up to the actual issue of patent, after the right to such patent has become vested by payment to the United States of the legal price for the land.

This is in accordance with numerous decisions of the courts to the effect that "the right to a patent once vested is equivalent as respects the government to a patent issued." (*Stark v. Starr*, 6 Wall., 402.)

But, lest the courts might hold, in view of the express requirement of section 2324, Revised Statutes, that such annual work shall be done "until a patent has been issued," it may be well to provide that the entry of the claim shall terminate the necessity of such work for the purposes of possessory holding.

I do not think, however, that earlier period should be fixed and other parties relieved from such expenditure during the period of preliminary controversy respecting the possessory right. It would be easy for a claimant to make application upon very slight and unsatisfactory show of compliance with law, and then cause, or consent to the filing of an adverse claim, followed by a suit in court, and by arrangement of the parties allow the case to slumber for years under various motion, for delay, no work upon or development of the claim being done in the meantime.

This would work serious detriment to mining interests, and in my judgment ought not to be rendered possible by too great relaxation of legal requirements.

An amendment will be submitted to Congress in accordance with these views.

Very respectfully,  
H. M. TELLER, Secretary.

A POLITE AND CAUTIOUS JUDGE.—An Irish judge tried two most notorious fellows for highway robbery. To the astonishment of the court as well as the prisoners themselves, they were found not guilty. As they were being removed from the bar the judge addressing the jailor said: Mr. Murphy you will greatly ease my mind if you will keep those two respectable gentlemen until seven or half past seven o'clock, for I mean to set out for Dublin at five, and I should like to have at least two hours start of them.

## The Courts.

### U. S. Supreme Court Proceedings.

The following persons were admitted to practice during the past week:

Horace M. Darling, of Lawrenceville, Pa., Henry D. Hotchkiss, of New York City, John Little, of Xenia, Ohio, James H. Sedgwick, of Peoria, Ills., Westbrook S. Decke, of Denver, Col., Henry C. Tompkins, of Montgomery, Ala., Le Grand Young, of Salt Lake City, Utah, A. C. Merritt, of New York City, Charles A. Hiller, of Salina, Kansas, Martin S. Clardy, of Farmington, Mo., T. J. Lamb, of Madison, Wis., Robert A. Burton, of Washington, D. C., and Samuel L. Brainard, of Erie, Penn.

JAN. 5, 1883.

No. 296. Alexander Aiken et al. v. L. H. Herschfield & Bro. From S. C. of Montana Territory. Dismissed on motion.

No. 1038. John Darling, etc., v. W. S. Berry et al. From C. C. of Iowa. Dismissed per stipulation.

No. 142. Reuben Hoffhelms v. C. Russell & Co. From C. C., N. Ohio. Argued and submitted.

JAN. 8, 1883.

No. 124. The City of Parkersburg v. Isabella Brown et al. From C. C. U. S., D. of W. Va. Decree reversed and cause remanded. Opinion by Mr. Justice Blatchford.

No. 298. Wm. L. Hemingway et al. v. J. W. Stansell et al. From D. C. U. S., N. D. of Miss. Decree reversed and cause remanded. Opinion by Mr. Justice Gray.

No. 803. The Town of Elgin v. Samuel Marshall et al. To the C. C. U. S., D. of Minn. Dismissed for want of jurisdiction. Opinion by Mr. Justice Matthews.

No. 804. The Town of Plainview v. Samuel Marshall et al. To the C. C. U. S., D. of Minn. Same.

No. 134. The Town of Red Rock v. Jacob A. Henry. To the C. C. U. S., D. of Minn. Judgment affirmed. Opinion by Mr. Justice Wood.

No. 106. Joshua C. Pierce et al. v. Ole L. Indseth. To the C. C. U. S., D. of Minn. Judgment affirmed. Opinion by Mr. Justice Field.

No. 123. The Michigan Central R. R. Co. v. Paris Myrick, use of the Commercial Bank of Chicago. To the C. C. U. S., N. D. of Ills. Judgment reversed and cause remanded. Opinion by Mr. Justice Field.

No. 99. Lucy C. Flaglor Gay et al. v. Catharine Parpart. From C. C. U. S., N. D. of Ills. Decree affirmed. Opinion by Mr. Justice Miller.

No. 104. The United States v. David F. Power et al. To the C. C. U. S., D. of Mass. Judgment affirmed. Same.

No. 103. The United States v. Jno. A. Knowles et al. To the C. C. U. S., D. of Mass. Same.

No. 132. Francis E. Pray v. The United States. From C. C. of C. Same.

No. 122. James Patterson, use of T. J. Brower, v. Cornelius Lynde, jr. Judgment affirmed. To the C. C. U. S., N. D. Ill. Opinion by Mr. Chief-Justice Waite.

No. 137. F. W. Hindekoper v. Joseph T. Sanger. From C. C. U. S., N. D. Ill. Decree affirmed. Same.

No. 140. Lot M. Morrill, collector, etc., v. John

W. Jones. To the C. C. U. S., D. of Maine. Judgment affirmed. Same.

No. 138. The Grand Trunk R. R. Co. v. Oliver I. Cummings. To the C. C. U. S., D. of Maine. Same.

No. 888. Chas. E. Shelton et al. v. E. M. Van Kleeck et al. From C. C. U. S., N. D. of Ill. Decree affirmed. Same.

No. 674. The First National Bank of Youngstown, Ohio, v. James B. Hughes et al. From C. C. U. S., N. D. Ohio. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 1051. Elias Greinebaum et al. v. Robert E. Jenkins, etc. To S. C. State of Ill. Same.

No. 655. The Connecticut River Lumber Co. v. Michael Harrigan. To S. C. Hampden Co., Mass. Dismissed per stipulation.

No. 1134. Andrew Albright et al. v. Andrew Teas. From C. C. U. S. for N. J. Submitted under Rule 32.

No. 838. The Chicago & Alton R. R. Co. v. The Wiggins Ferry Co. From C. C. U. S., E. D. Mo. Same.

No. 839. The Chicago & Alton R. R. Co. v. The Wiggins Ferry Co. From C. C. U. S. E. D. Mo. Same.

No. 1190. Eugene Hellen et al. v. J. B. Blake et al. From S. C. Dist. of Col. Docketed and dismissed.

No. 144. Jas. H. Embry, ad., etc., v. W. L. and T. W. Palmer, ad., et al. S. C. of Errors of Conn. Argued and submitted.

No. 337. Wm. S. Williams et al. v. E. D. Morgan et al. From C. C. U. S., La. Argued and submitted.

JAN. 9, 1883.

No. 986. H. A. Goodrich, etc., v. Andrew Richmond, etc. From C. C. U. S., N. D. of Ill. Dismissed on motion.

No. 242. James C. Hazelton v. Thomas O'Connor. To C. C. U. S., M. D. of Tenn. Dismissed by consent.

No. 845. Andrew Antoni v. Samuel C. Greenhow, etc. S. C. of App. Va. Argued and submitted.

JAN. 10, 1883.

No. 147. The Inhabitants of the Township of Montclair v. Thomas Ramsdell. C. C. U. S., New Jersey. Argued and submitted.

JAN. 11, 1883.

No. 470. John H. Pearson v. The Boston & Albany R. R. Co. et al. To the S. C. of Mass. Dismissed per stipulation.

No. 1194. Wm. P. Mulhall et al. v. Jas. L. Van Woert. From C. C. U. S. for Col. Dismissed with costs.

Nos. 75 and 76. The Town of Thompson v. Orlando Perrine. C. C. U. S., S. D. New York. Argued and submitted.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

Present, CARTTER, C. J., and Justices COX and JAMES.

JAN. 8, 1883.

Chas. E. Brown, of Ohio, was admitted to practice.

Jackson et al. v. Miller. Judgment reversed and remanded. Opinion by Mr. Justice James.

District of Columbia v. Clephane. Judgment affirmed. Same.

Green v. Lake et al. Judgment reversed and new trial ordered. Opinion by Mr. Justice Cox.  
 Cox & Bro. v. Strasburger. Judgment affirmed.  
 Curtis et al. v. Strasburger. Same.  
 Stacy et al. v. Strasburger. Same.  
 Baltimore Furniture Manufacturing Co. v. Dungan. Same.  
 United States v. Edward Morrill et al. Same.  
 Grotijan et al. v. Strasburger. Same.  
 U. S. v. King. Judgment reversed.  
 Cloyes v. Strasburger. Same.  
 Powell et al. v. Strasburger. Same.  
 Grant v. Phoenix Mutual Life Ins. Co. Mandate of S. C. U. S. filed.

JAN 9, 1883.

U. S. v. Murphy et al. Argued and submitted.  
 Bryan v. McNamee. Same.

JAN. 10, 1883.

Phoenix Mutual Life Ins. Co. v. Grant. Receiver to resume duties.  
 U. S. v. Champlin. Judgment below reversed and cause remanded.

Bryan v. McNamee. Judgment below affirmed.  
 Waggaman v. Randall. Order of Circuit Court overruled and ordered to stand for trial at Circuit Court on plea of title.

U. S., use of, v. Champlin. Judgment reversed and remanded.

JAN. 11, 1883.

Killeen v. Glensfalls Ins. Co., &c. Argued and submitted.

Larner et al. v. Winn. Same.

Odell v. Browning, &c. Decree affirmed.

JAN. 12, 1883.

Mussey Philip G. Russell was admitted to practice.

Lewis, trustee, etc., v. Kennedy et al. Argued and continued.

Assignment for January 15, 1883: 88, 101, 103, 104 ½, 107 ½, 108, 109, 110, 112 and 113 ½.

#### CIRCUIT COURT.—Justice Mac Arthur.

JAN. 8, 1883.

Crandell v. District of Columbia. Death of plaintiff suggested.

Hewitt v. Brown. Judgment by default.

Hewitt v. Henyon. Same.

Seibert v. Homiller. Same.

Carpenter v. Main. Judgment on stipulation.

Bogue v. Henry. Verdict for defendant for \$652.25.

JAN. 9, 1883.

Sears, Clough & Co. v. Kaiser. Verdict for defendant.

Jackson & Co. v. Schulze. Same.

Valmont v. Constantini. Same.

Eaton v. District of Columbia. Verdict for plaintiff for \$250.

JAN. 10, 1883.

Daley v. Fitzmorris. Plaintiff called and suit dismissed.

Domerv. Lambert. Judgment of condemnation.

O'Hare v. Johnson. Same.

Young v. Van Riswick. Same.

Gove v. Leitch. Verdict for defendant for \$425.

JAN. 11, 1883.

Gilman v. Baldwin Bros. Judgment by default.  
 v. William Baldwin and confession v. Edward Gray & Page v. Coyle. Referred to auditor.

Atkins v. Fitzgerald. Verdict for plaintiff for \$25.

Spindle v. Sweet et al. Verdict for defendant.  
 Plymouth Woollen Co. v. Menckel. Judgment by default.

JAN. 12, 1883.

Shipman v. Magarity. Motion to file a more specific declaration overruled and 15 days to plead.  
 Stiles v. Selinger. Bills of exceptions signed, &c.  
 Hall v. Inland Seaboard Co. Motion for new trial.

Term closed *sine die* January 13, 1883. The next term will be convened Monday, the 22nd inst.

#### EQUITY COURT.—Justice Hagner.

8094. Yates v. Yates. Testimony ordered taken.  
 Burdette v. Burdette. Demurrer overruled.  
 Support, pendent lite, granted and reference to auditor.

Rice v. Rice. Testimony before examiner ordered.

JAN. 8, 1883.

Hamilton v. Morrison. Testimony ordered taken.

Wolf v. Wolf. Same.

Haines v. Jervis. Same.

Sage v. Campbell. Sale ratified and report confirmed.

Dodge v. Davis. Sale ordered and trustee appointed.

Denmead v. Demead. Sale finally ratified.

Van Haake v. Van Haake. Rule on defendant returnable January 12.

Walker v. Boyle. Release set aside decreed.

JAN. 9, 1883.

Fleetwood v. Hamkworth. Appearance of defendant ordered.

Ramsey v. Leib. Sale ratified nisi.

Leddy v. Leddy. Testimony ordered taken.

Hess v. Sullivan. Same.

Frederick v. Christiani. Same.

Barrett v. Nat. Bank Republic. Argued and submitted.

#### CRIMINAL COURT.—Justice Wylie.

JAN. 3, 1883.

United States v. Brady et al.  
 Motion was made on the part of the defendants to have the verdict in the last trial recorded as announced, including the conviction of Peck, who was dead. Motion denied. Charles H. French, Geo. J. Brewer, Adolph M. Grimes, Madison Davis, and George M. Sweeney, testified in connection with certain routes. A letter was offered as evidence. The defense objected to its admissance. Court sustained the objection after argument.

JAN. 4, 1883.

United States v. Brady et al.  
 H. N. Howard, Wm. B. Farrish, J. H. McDaniel and W. N. Higginson testified, and Mr. Grimes was recalled. Question of admitting the contents of a certain paper by parol was raised. The court ruled that sufficient search had not been made and declined to admit secondary evidence of its contents.

JAN. 5, 1883.

J. S. Piper, Geo. W. Sweeney and Mr. Sleeman testified; and after their examination documentary evidence was introduced.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JAN. 5, 1883.

94138. E. H. McEwen & Co. v. Helbig & Geromerath. Account, \$137.77. Pliffs attys, Ross & Dean.  
 94139. Alberger, Stoer & Co. v. Philip Hunckel. Account, \$106.19. Pliffs attys, Ross & Dean.  
 94140. W. J. Stevens & Co. v. Bernard Silverberg. Note, \$106.57. Pliffs attys, Ross & Dean.  
 94141. Morris Poppo v. Isaac Oppenheimer. Judgment of Justice Walter, \$46.80. Pliffs attys, Carusi, Miller & Sands.  
 94142. Same v. Same. Judgment of Justice Walter, \$63.55. Pliffs attys, same.  
 94143. Hicks & Keeler v. Louis Kaufman. Account, \$333.45. Pliffs attys, Cook & Cole.

JAN. 6, 1883.

94144. J. T. Beckham et al. v. John J. Gibbons. Account, \$132.71. Pliffs attys, Olaughton & Olaughton

JAN. 8, 1883.

94145. Samuel Hurdle v. The District of Columbia. Damages, \$60.00. Pliffs attys, Lewis and Miller.  
 94146. Robert G. Campbell v. O. T. Holtzclaw et al. Note \$111.80. Pliffs atty, J. G. Bigelow.

JAN. 9, 1883.

94147. Fernand A. Urso v. Scott Cornell. Replevin. Pliffs attys, Cook & Cole.  
 94148. The United States of America, use of Charles Edward Fanning v. Henry A. Jones et al. Bond, \$500. Pliffs attys, Wilmarth and Browne.

JAN. 10, 1883.

94149. T. Roesele & Son v. Alice O. Garten, Bill of Exchange, \$548. Pliffs atty, W. B. Webb.  
 94150. The Washington Market Co. v. Emma A. Beckley. Account, \$81. Pliffs attys, Birney & Birney.

JAN. 11, 1883.

94151. The United States ex rel. John Deuringer v. Hillman A. Hall, Mandamus. Pliffs atty, J. G. Bigelow.  
 94152. Samuel D. Linn v. Henry Smith. Account, \$149.92. Pliffs atty, W. Edgar Linn.

94153. Benjamin F. Noff v. Richard J. Beall et al. Notes \$27.52. Pliffs atty, I. Williamson.  
 94154. Anton Weidmann v. Bernard Silverberg. Judgment of Justice Mills, \$89.19. Pliffs attys, Edwards & Barnard.

JAN. 12, 1883.

94155. Samuel D. Linn v. Frank Norton & Co. Account, \$294.00. Pliffs atty, W. Edgar Linn.  
 94156. William E. Matthews v. Isaac N. Cary et al. Damages, \$1,000. Pliffs attys, Birney & Birney, James H. Smith and E. T. Greener.

### IN EQUITY.—New Suits.

JAN. 5, 1883.

9414. German American National Bank, upon petition of B. U. Keyser. To compromise indebtedness of E. H. Plummacher. Com. sol., B. U. Keyser.

JAN. 6, 1883.

9415. Christian A. Fleetwood v. J. Malcolm Hawkesworth. To substitute trustee. Com. sol., James H. Smith.  
 9416. Benjamin G. Lovejoy v. Edmund Hudson. Dissolution of partnership. Com. sols., Merrick & Morris and Fendall.

JAN. 9, 1883.

9417. James Gibbons v. District of Columbia. To annul and vacate illegal tax sales, &c. Com. sols., Merrick & Morris and Hamilton.

9418. Fannie E. S. Ware v. Charles H. Ware. For divorce. Com. sol., A. K. Browae.

9419. Charles O. Duncanson v. Charles E. Walker et al. Injunction. Com. sol., L. Kent.

JAN. 12, 1883.

9420. L. M. Saunders v. S. J. Bowen et al. For new trustee. Com. sol., D. O'U. Callaghan.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of January, 1883.

FRANK B. SMITH

v.

SUBAN BURCH ET AL. } No. 8,410. Equity Docket,

On motion of the plaintiffs, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Frank Horne, Laura M. Horne, John Francis Horne, Mary L. Horne, William J. Horne and Frances Ellen Horne, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
 True Copy. 2-3 Test: E. J. Meigs, Clerk.

### Legal Notice.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 5, 1883.

In the matter of the Estate of Egbert Thompson, dec'd. Application for Letters of Administration on the estate of Egbert Thompson, late Captain U. S. Navy, has this day been made by Emily B. Thompson, of Washington City.

All persons interested are hereby notified to appear in this Court on Friday, the 2d day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

H. J. RAMSDELL, Register of Wills.

PAINES &amp; LADD, Attorneys.

2-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of January, 1883.

CHRISTIAN A. FLEETWOOD

v.

J. MALCOLM HAWKESWORTH,

} No. 8,415. Eq. Doc. 23.

SURVIVING TRUSTEE ET AL.

On motion of the plaintiff, by Mr. Jas. H. Smith, his solicitor, it is ordered that the defendant, J. Malcolm Hawkesworth, surviving trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A. B. HAGNER, Justice.

A true copy.

Test:

2-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH A. MOORE ET AL.

v.

MARY E. HARRISON ET AL.

} No. 8,192. Eq. Doc. 18.

James G. Payne and Edward H. Thomas, trustees, having reported the sale of lot six [6], of the subdivision of part of square numbered four hundred and fifty-eight [458], made and recorded by the heirs of William Whetcroft, deceased, to Peter Lattener, for the sum of ten thousand eight hundred [10,800], dollars and the sale of the east half of the west half of lot eight [8], in square numbered five hundred and sixteen [516], fronting 15 feet on "I" street, by the depth of said lot to Robert Herman, for the sum of thirty-seven and one half [37½] cents per square foot.

It is, by the court this 9th day of January, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of February next. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said day.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy.

Test:

2-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

GEORGE W. SNOUFFER ET AL.

v.

FELIX GREENAPPLE ET AL.

} No. 7,400. In Equity.

Upon consideration of the report of the trustee filed herein on January 4, 1883:

It is, this 10th day of January, A. D. 1883, ordered, that the sale made by them and therein reported be finally ratified and confirmed on February 10, 1883, unless cause be shown on or before that day. Provided, a copy hereof be inserted in the Washington Law Reporter once a week for three weeks prior to that day.

The report states that lot 101, of King's subdivision in square 492, was sold to Isaac Wenger, for \$1,280.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy.

Test:

2-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JAMES CORNBILUS ET AL.

v.

JOHN DE VAUGHN ET AL.

} No. 7,919. Eq. Doc. 21.

Upon consideration it is by the court this 2d day of January, 1883, ordered that the sale heretofore made and reported by Woodbury Wheeler and Edward H. Thomas, trustees of lot twenty-two (22), in said trustee's subdivision of square seven hundred and ninety-nine (799), at and for the sum of three hundred (300), dollars to John F. Donohoe, be ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February next. Provided, a copy of this order be published once a week for each of three successive weeks prior to said day.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy.

Test:

2-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, Sitting in Equity, January 9, 1883.

MARGARET L. RAMSEY

No. 7,902 Eq. Doc. 21.

**ELEANOR LEIB ET AL.**  
Susanah Crandell and William H. Weizel, the trustees in the above entitled cause, having reported to the court that they have sold parts of lots 127 and 129, in Beatty and Hawkins' addition to Georgetown, fronting on High street near Second street to John Archer, who has assigned his purchase to William H. Brown, at and for the price and sum of thirteen hundred and eighty dollars (\$1,380), and that the said purchaser has complied with terms of sale as prescribed by the decree:

It is, by the court this 9th day of January, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed and the trustees are hereby directed to make a deed of said property to said purchaser, unless cause to the contrary be shown on or before the 9th day of February, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 9th day of February, 1883.

By the Court. **A. B. HAGNER**, Asso. Justice.  
True copy. Test: **E. J. MEIGS**, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, January 5, 1883.

In the matter of the Will and Codicil of Thomas Harper, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by Little Markes Harper.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of February next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Record and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: **A. B. HAGNER**, Justice.  
Test: **H. J. RAMSDELL**, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, December 29, 1882.

In the case of Ida Harting, Administratrix of Charles Harting, deceased, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 19th day of January, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL**, Register of Wills.  
**J. J. WILMARTH**, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 25th day of December, 1882.

VALENTINE McNALLY

No. 8,407. Eq. Doc. 22.

**ELIJAH J. WARD ET AL.**  
On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER**, Justice.  
A true copy. Test: **E. J. MEIGS**, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, January 10, 1883.

In the matter of the Estate of Kilauea, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER**, Justice.  
Test: **H. J. RAMSDELL**, Register of Wills.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann M. Green, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1882.

**WILLIAM W. WISHART** 501 F street n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, Sitting in Equity, December 28, 1882.

MARTHA F. TUCKER

No. 8,045. Eq. Doc. 22.

**CHRISTIAN OLSEN ET AL.**

Bainbridge H. Webb and Franklin H. Mackey, trustees, having reported to the court the sale of the real estate mentioned in the proceedings in this cause for \$615:

It is, this 28th day of December, A. D. 1882, ordered that said sale, as so reported be finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of January, A. D. 1883, next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. **A. B. HAGNER**, Asso. Justice.  
True copy. Test: **E. J. MEIGS**, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 3d day of January, 1883.

BENJAMIN C. LAZENBY

No. 8,380. Eq. Doc. 22.

**MARGARET O. O. LAZENBY ET AL.**

On motion of the plaintiff, by Mr. Chas. A. Walter, his solicitor, it is ordered that the defendants, George M. Sweet, Frank M. Sweet, John O. Tanner, Anna A. Tanner, Fannie M. Fisher and Lillie M. Tenner, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. **A. B. HAGNER**, Justice.  
True copy. Test: **E. J. MEIGS**, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

ROBERT B. POTTER

No. 8332. In Eq.

**ELEANOR ROBERTA POTTER ET AL.**

James Lowndes, the trustee to sell, having reported that he sold to Robert B. Potter, for \$6,300, lot "A," of original lots three (3), four (4) and (5), in square seventy-eight (78), situate in the District of Columbia, with the improvements thereon:

It is, this 22d day of December, 1882, ordered, adjudged and decreed that the said sale be and it is hereby ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, 1883. Provided, that this decree be published once a week for three successive weeks before the 24th day of January, A. D. 1883, in the Washington Law Reporter.

By the Court. **A. B. HAGNER**, Asso. Justice.  
A true copy. Test: **E. J. MEIGS**, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James D. Chedal, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.

**FLAVIUS J. WATERS**, Executor.  
**B. T. HANLEY**, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Brooke Howard, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 13th day of December next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of December, 1882.

**ANNA I. C. HOWARD**, Executrix,  
476 Pa. Ave., n. w.

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**HENRY W. BURCH ET AL.** } No. 8,206. Equity.

**JOHN E. BURCH ET AL.**  
Henry O. Coburn, the trustee appointed by the decree in this cause to sell the real estate in the proceedings mentioned, having reported to the court that, after complying with the requirements of said decree he sold part of lot five (5), in square three hundred and forty-five (345), to Abraham L. Johnson, for the sum of thirty-seven hundred and twenty-five dollars (\$3,725); also, that he offered for sale at public auction parts of lots one (1), twenty-nine (29) and thirty (30), square two hundred and fifty (250); part of lot four (4), square two hundred and twenty-seven (227), and the western half of lot eight (8), square two hundred and twenty-eight (228), but could not sell the same; that since said endeavor to effect a sale he has received the following offers to purchase at private sale, to wit: parts of lots one (1), twenty-nine (29) and thirty (30), square two hundred and fifty (250), for the sum of four thousand five hundred dollars (\$4,500), from Theodore I. King and Metella King; and part of lot four (4), square two hundred and twenty-seven (227), for the sum of fifteen hundred dollars (\$1,500), from Annie C. Humes:

It is, therefore this 23th day of December, A. D. 1883, ordered, that said offers of Theodore King and Metella King and Annie C. Humes, be and the same are hereby accepted; and it is further ordered and decreed that the sale of said lots to Abraham L. Johnson, Theodore I. King and Metella King and Annie C. Humes, be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of January, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 27th day of January, A. D. 1883.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. 1-3 Test: **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**LEONARD SCHELL** } No. 7,777. Equity.

**JOHN EBERT ET AL.**  
Leon Tobriner and Richard P. Jackson, trustees herein, having reported that on Thursday, December 28, 1883, they sold lots 15, in square 983, with the improvements thereon to Nathaniel E. Thompson, for \$1,120, lots 12 and 14, in square 983, to Miss Mary Wall, for \$405 and \$390, respectively, and lots 5 and 6, square 983, to Lewis D. Means, for \$405 each:

It is, this 4th day of January, A. D. 1883, ordered that said sale be confirmed and ratified unless good cause to the contrary be shown on or before the 4th day of February, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

The report of the trustees' states that the total amount of said sales is \$2,665.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of January, 1883.**

**MINNIE S. WILLEY** } No. 8,366. Eq. Doc. 22.

**CHARLES F. WILLEY.**  
On motion of the plaintiff, by Mr. J. G. Bigelow, her solicitor, it is ordered that the defendant, Charles F. Willey, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**CATHERINE PFLEFFER** } No. 8,167. Eq. Doc. 22.

**JOHN STRAINING ET AL.**  
The order entered herein on the 31st day of October, 1882, conditionally confirming the sale of the real estate made and reported herein by C. O. Cole, trustee, not having been published as provided in said order:

It is, this 2d day of January, 1883, ordered, that said sale stand confirmed at the expiration of thirty days from this date. Provided, a copy of this order be published once per week for three successively in the Washington Law Reporter within the said thirty days. Said sale was of lot numbered thirty-eight (38), in Homes' sub-division of Mount Pleasant and said report states that it was sold to Elizabeth Straining, at \$1,975.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 29, 1882.**

In the case of Reginald Fendall, Executor of Eleanor C. Gillet, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 26th day of January A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 1-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Joe Bolabola, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: 2-1 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Beniamina, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: 2-1 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the estate of Kaia, alias Joe, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: 2-1 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.**

**NOTLEY ANDERSON, Complainant.** } No. 8,238.

**HENRY W. HOWGATE ET AL. Defendants.**  
Henry Wise Garnett, trustee in this cause having reported the sale of sub-division lots two hundred and nine (209), and two hundred and ten (210), in Henry W. Howgate's sub-division (recorded in the Surveyors Office, in Book eleven (11), at folio four (4)), of lots one hundred and eight (106), to one hundred and twelve (112), inclusive, of Patterson's sub-division of part of square numbered two hundred and six (206), as the same is laid down on the plat of Washington City, District of Columbia, to James E. Waugh, for the sum of forty-two hundred dollars (\$4,200).

It is, this 19th day of December, A. D. 1882, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 19th day of January, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 51-3 **R. J. MEIGS, Clerk.**



*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Hakuole, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Kalimahelehonua, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Bob Bolabola, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Kalawale, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Halelilli, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Alapai, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court:

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Iaahu, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the court.

Test: 2-1 A. B. HAGNER, Asso. Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. January 10, 1883.**

In the matter of the estate of Kaoni, late of Honolulu, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Timoteo, alias Jim California, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 10, 1883.**

In the matter of the Estate of Olalo, late of Hawaiian Islands, deceased.

Application for Letters of Administration ancillary on the estate of the said deceased has this day been made by James Lowndes, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Saturday, the 13th day of January next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once in the Washington Law Reporter previous to the said day.

By the Court.

Test: 2-1 A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

# Washington Law Reporter

WASHINGTON - - - - - January 20, 1883

GEORGE B. CORKHILL - - - EDITOR

## Westminster Hall as a Law Court.

The inconvenience and heavy expense which the nomadic system entailed upon suitors was the cause of the first improvement upon the primitive method—a clause in Magna Charta stipulating that “common pleas should not follow the court, but shall be held in some certain place.” The “certain place” selected was the Great Hall of Westminster. The Royal Palace of Westminster had been the habitat of the Curia previously to this enactment, but only when the king happened to be in residence there; and on the erection in 1097 of the hall its meetings had been transferred thither from the palace. The reign of Henry III saw another step in the right direction; the Curia itself becoming stationary in all its branches, a lodging in the hall being assigned to each.

Once settled in its new abode, surrounded by the effigies of its former presidents from Edward the Confessor to Stephen, and presided over by the king in person, or in his absence by his deputy, the *Totius Angliæ Justiciarius*, the business of the Curia grew rapidly in bulk and importance. A Court of Chivalry, under the presidency of the Lord Constable and Lord Mareschal, and a court for the regulation of the king's domestic servants, the prototype of the more modern Palace Court, were added to those already existing. The Barons of Parliament, with the Lord High Steward at their head, formed a Court of Appeal from the lower tribunals, as well as for the trial of delinquent peers; while the Courts of Chancery, Common Pleas, Exchequer and King's Bench, disposed of the remaining legal business. The last named had its domicile in the southeast angle of the hall, deriving its name from the marble bench, appropriated to the king on coronation days, which served as the seat of justice. Here were heard all the pleas of the Crown. The northwest corner was occupied by the Court of Common Pleas. “In the southwest angle,” says Walcott, “sat the Lord Chancellor, the Master of the Rolls, and eleven men learned in the civil law, called Masters in Chancery;” and as time went on, and even more numerous courts became necessary to cope with the requirements of suitors, a station close to the King's Bench was assigned to the

new Court of Wards and Liveries, instituted by Henry VIII, adjoining which sat an earlier sub-section known as the Equity Court of Requests or Conscience, “sometimes called the Poor Man's Court, because he could there have right without paying money.” It is hardly necessary to remark that no court conducting business on these principles exists under our modern system of judicature.

The Court of Exchequer—taking its name from the parti-coloured cover of the table upon which the king's accounts were reckoned—also had its quarters in Westminster Hall, and as late as 1256 was presided over by the King (Henry III) in person. In modern times its president, when the court sat in equity, has been the Chancellor of the Exchequer; and here the selection of fit and proper persons to serve the office of sheriffs of the counties was made, and the quaint ceremonials attendant on the presentation of the sheriffs of London and Middlesex to the court took place—the chopping of faggots and formal counting of horse-shoes and hob-nails by the senior alderman, by way of suit and service on the part of the city for certain long-defunct tenements in the county of Salop and the parish of St. Clement Danes.

As a criminal court, too, Westminster Hall has been the scene of most of the great State trials in English history. Here, on January 20, 1649, Charles I met his accusers, and refused to recognize the jurisdiction of his self-constituted judges. Here, in 1305, William Wallace was condemned to death on charges of treason, sacrilege, and robbery. Here proud protector Somerset, and his no less overbearing rival, the Duke of Northumberland, received their sentences. And in the list of trials in Westminster Hall figure also the names of Robert Devereux, Earl of Essex; Guy Fawkes and his fellow-conspirators; Wentworth, Earl of Strafford; the Seven Bishops; the Jacobite Lords; Earl Ferrers, for murder; the Duchess of Kingston, for bigamy; Warren Hastings, whose trial dragged its slow length along for seven years; and Lord Melville, whose impeachment is said to have drawn tears from the eyes of his friend and political chief, William Pitt.

The original hall having been ruinous in the reign of Richard II, was re-roofed, if not completely rebuilt, by that monarch in the form which—but for necessary repairs and slight alterations—it now presents. Two curious engravings—one of the exterior, published 1808, the other of the interior, published in 1797—are reproduced in “Old and New London.” The former plate shows the north front very much as we see it at the

present day, except that its lower part is obscured by a range of poor-looking buildings on each side of the doorway; while the sites of the present law courts and Houses of Parliament are occupied by private houses and taverns abutting upon the side-walls of the hall itself. The latter print, called "The First Day of the Term," "shows the centre of the hall filled with a motley throng; while on either side are rows of banners (guidons, colours and standards, ensigns and trophies of victory obtained by the confederates under the command of his Grace the Duke of Marlborough); beneath which, on the east, are rows of bookstalls, and on the west sundry stalls of milliners, with ladies making purchases at the counter. At the further end of the hall, upon the steps, are two large boxes or pews, in which are seated six officials in wigs and gowns, and looking as grave as judges."

Such were the incongruous surroundings of the majesty of the law until the building of the present courts, from the design of Sir John Soane, 1820-25. However great the improvement thus effected may have been, it cannot be denied that few cities could show a less imposing or less beautiful structure than that which has sufficed for the legal wants of our metropolis for the last sixty years; and no one can regret the announcement by Mr. Shaw Lefevre of the intended demolition of the mean-looking buildings which now lean against and hide the western side of "Rufus's Hall."—*St. James Gazette*.

#### Using Streets of City for Coasting.

In the case of *Faulkner v. City of Aurora*, the Supreme Court of Indiana (Dec., 1882) had before it the question of the liability of that municipal corporation, for injuries received by a pedestrian from the sled of a coaster upon one of the streets of the city.

The complaint alleged that a certain steep street in the city of Aurora was occupied by large numbers of persons in sliding and coasting, which sport was carried on in the presence of its officers; that the city had prohibited by ordinance all persons from engaging in any sport on its streets that might be dangerous to life or property; that said coasting was dangerous and no efforts were made by the city to prohibit it, and that the appellant's son was struck by the sled of one of the coasters, and had his leg broken, etc.

It was held by the court that the city was not liable, because of its failure to prohibit by ordinance coasting upon its streets (Dillon on Mun. Corp., sec. 753). Nor was it liable for the failure of its officers to enforce the

ordinance which it had adopted, (Dillon, *supra*, sec. 754; 1 Allen, 172; 49 Wis., 254.) That the city was not legally bound to abate the nuisance complained of (94 Pa. St., 121; 46 N. H., 59; 129 Mass., 594; Dillon, sec. 789), and that if the city were liable for the injury thus produced it would follow logically that it would be liable for all injuries caused by loafers lounging upon its streets, occurring in the presence of its officers, if it were known that such persons were accustomed to lounge on such streets.

## Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

JOHN B. HAMMOND v. JAMES E. MILLER.  
At Law. No. 21,785.

{ Decided December 18, 1882.

{ The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. Where one partly performs his contract and then refuses to complete it, he has no right of action upon the contract even for the work already done. His rights under it are gone when he abandons it, and the other party has a right to treat it at once as at an end.

*Quære*, whether the acceptance of the work partially performed, even when the acceptance cannot be avoided, does not raise an implied assumpsit to pay the reasonable value of the work so accepted.

2. But in the case of an uncompleted contract to build a house, when the work already done has been paid for, the owner has the right immediately upon the default to take possession of the unfinished building, and finish it himself, or employ others to do so, and under no such circumstances can the original contractor have a claim upon the owner of the land for any saving effected on the original contract price in the completion of the building.

3. Under a building contract, M., the owner, had full power, in case of the default of the contractors, B. & C., to finish the houses at their cost, and to deduct the same from any money owing them at the time of default. B. & C. defaulted, having been paid for all work done to date. The completion of the houses was then undertaken by M., and effected at a less cost than the original contract price. It was argued that this completion was, under the terms of the contract, a completion by M. as agent of B. & C., and on their account, and hence B. & C. were entitled to the saving made on the contract price.

*Held*, That it was optional with M. to complete the contract on B. & C.'s account, or to treat it as wholly rescinded, and finish the houses for his own benefit; that having elected the latter, the saving was his own, and not B. & C.'s. But, *quære*, if money sufficient to finish the work and belonging to B. & C. had been in M.'s hands,

would the work finished by M. be work done with the money of B. & C., and, in contemplation of law, *their* work, so as to entitle them to any saving on the contract price made by M.?

4. *Seemly*, if M. accept an order of B. & C. in favor of H., payable out of whatever money will be due, B. & C., on the completion of their contract, and afterwards advanced to B. & C., money that was due *only on such completion*, he will be liable to H. for as much as was thus paid away to the latter's prejudice.

THE CASE is stated in the opinion.

ELLIOTT & ROBINSON for plaintiff.

CARUSI, MILLER & SANDS for defendant.

Mr. Justice Cox delivered the opinion of the court.

On the 3rd of July, 1879, a contract was made between William Lawson and William H. Hazle on the one part, and James E. Miller on the other, that the firm of Lawson & Hazle were to erect three houses for Miller on a lot of ground owned by him, at an aggregate cost of \$8,499. The price was to be paid in seven different instalments, the last instalment when the houses were completed and the keys turned over to defendant Miller; with this exception, that 25 per cent. was to be reserved from each instalment and retained by Miller until thirty days after the dwelling-houses should have been completed and the keys of the same turned over by Lawson & Hazle, or their representatives, to him. The houses were to be completed in four months, that is, by the third of November; and it was stipulated that if the contractors should fail to complete them within the four months, Miller should have the right to charge them \$50 for each week of delay in the completion. It was further stipulated that if the contractors should fail to finish the houses within a period of *five* months from the execution of the contract Miller should have "full power and authority to employ other person or persons to finish and complete the said dwelling-houses or residences, at the cost and expense of the said Lawson & Hazle, their executors, &c.; which cost will and can be deducted by said Miller from any money which may be in his possession at the time of said failure" on the part of Lawson & Hazle to complete the dwelling-houses, &c.

Lawson & Hazle employed this plaintiff, John B. Hammond, as sub-contractor, to furnish certain materials, doors, windows, blinds, &c., but Hammond was unwilling to deliver these materials on the credit of Lawson & Hazle only, and required an order upon the defendant, the owner of the ground, and the acceptance of such order by him before he

would deliver the materials. Accordingly, Lawson & Hazle made this order:

"SIR: You will please pay John B. Hammond for materials for your three houses, which we are erecting for you, &c., the sum of \$796.54, and deduct the same out of payment which will be due us on the completion of said houses."

On the paper was written: "This order is hereby accepted, payable when Messrs. Lawson & Hazle complete the three houses herein stated, that is, per contract. James E. Miller."

Lawson & Hazle failed to complete the houses by the third of November, and thirty days more time was given them. They failed to complete them by that time, and after having done perhaps three-fourths of the work, they formally abandoned the contract and refused to complete the houses. The defendant, Miller, after importuning them to go on with the work, and calling upon the plaintiff also, in his own interest, to prevail upon them to complete the houses, seems to have acted upon the assumption that there was no more to be expected from them, and to have taken possession of the houses. Having taken possession, he entered into new contracts in his own name with other parties and went on to finish the houses at his own expense. At the time when Lawson & Hazle formally refused to go on with the work, Miller had paid them all that was due them for the work already done, and a little over, including even the 25 per cent. which, by the contract, he had been entitled to reserve; so that at that time he owed them nothing. As I have said, he then proceeded to finish the houses himself, under new contracts with other persons. In making these new contracts, he effected a saving, upon the price stipulated in the original contract, of \$382.19—that is, he got the work done for so much less than Lawson & Hazle would have been entitled to if they had done the work under their contract.

Then this plaintiff, Hammond, the sub-contractor, sued Miller upon this accepted order, calling it a bill of exchange, and included in his declaration the common counts. At the trial below, several exceptions were taken to the ruling of the court, but the most important one relates to the last instruction which the judge gave the jury, to return a verdict in favor of the plaintiff for the sum of \$382.19, the amount found in the defendant's hands after he had completed the houses. To that instruction of the court the defendant excepted. Now, in giving this instruction, the court below clearly proceeded upon the theory that when the defendant took possession of

the unfinished houses and completed them, he did so in the interest of the defaulting contractors and substantially as their agent, and that the defaulting contractors, being chargeable with the cost of building the houses, were entitled to credit for the balance of the contract price. This leads us to consider what are the rights of a contractor who has partly performed his contract and then refuses to complete it. We speak now in the first instance of his rights at common law independent of any special provision such as is contained in this contract and is relied upon particularly by the plaintiff. It is perfectly well settled at common law that if a man partly performs his contract and then refuses to complete it, he has no right of action upon the contract even for the work which has been done. The later authorities go further than that. For instance, the rule is laid down in 2 Smith's Leading Cases (Am. Ed. Hare's notes, p. 25.) in comments upon the case of *Cutter v. Powell*: "But if there has been an entire executory contract and the plaintiff has performed a part of it, and then wilfully refuses, without legal excuse and against the defendant's consent, to perform the rest, he can recover nothing, either in general or special assumpsit."

But there are cases which hold that where the work has been partially performed and is accepted even under compulsion, that is, where it cannot be avoided by the other party, that fact alone raises an implied assumpsit to pay the reasonable value of the work which has been so accepted and used. But it is perfectly clear that even if the party can recover upon the contract for work which is already done, he cannot recover upon the contract for work which he did not do and which he refused to do. His rights under the contract are gone when he abandons it, and the other party has a right to treat it at once as at an end. In this case the owner had paid for all the work that had been done. He had the right, immediately upon the default of the contractors, to take possession of the unfinished houses, as he did take possession of them, and to finish them if he pleased, or to sell them to somebody else, or to employ other persons to do the work which the contractors had been engaged to do and had refused to do. Under no such circumstances can it be conceived that the contractors so in default could have a claim upon the owner of the land. They certainly could not sue upon an implied assumpsit for work which had been done by other people. They certainly could not sue upon the contract, because they would have been compelled either to aver and prove that

they had performed the contract, or to aver a readiness to perform it, and that they were prevented from doing so by the other party. The only theory under which a right of that kind could be maintained by the contractors against the owner would be that, although they had repudiated the obligation of the contract, they still retained the benefit of the contract, that although they refused to do the work they still had the right to do it, and that nobody else could do it except in subjection to them and as their agent, and that the owner of the ground could not rescind the contract notwithstanding the refusal of the contractors to complete it; all which conclusions are in our opinion so heterodox that they do not need any discussion.

But in this particular case reliance is placed upon this peculiar clause in the contract as modifying the common law rights of the parties: "The said Miller, shall have full power and authority to employ other person or persons to finish and complete said dwelling-houses at the cost and expense of said Lawson & Hazle; which cost or expense will and can be deducted by said Miller from any money which may be in his possession at the time of said failure on the part of said Lawson & Hazle to complete and finish said dwelling houses."

It is argued that when the houses were completed by the owner it was substantially, under the terms of the contract, a completion by him as the agent of the contractors and on their account, and that therefore they are entitled to credit for the contract price, while they are to be charged simply with the cost of completion. It is to be observed in the first place, that the language of this contract does not make it the duty of the owner to pursue this course, but simply provides that he shall have power and authority to do so. We do not understand that this takes away from him the right to resort to his common law right to rescind the contract, ignore the contractors, and proceed to finish the houses on his own account; but simply that this power is given to him to secure the completion of the contract by the contractors, if he chooses to resort to it. And the operation of it is simply this: In the absence of this provision in the contract, the contractors, after finishing a large part of the work and then declining to complete it, might say to the defendant: "The 25 per cent. which you have in your hands, reserved from the several instalments, is our money; we have earned it by work already done, and you have no right to apply it to anything else." To which the owner might answer: "But, by the terms of

this contract, you engaged to do certain work which you have not done, and under the contract I am entitled to apply your money, now in my hands, to the completion of the work." This, I think, was unquestionably the object of this provision, and, as we have said it left it optional with the owner, whether he would resort to this means of completing the work, or would treat the contract as wholly rescinded and proceed to have the work done upon his own responsibility and for his own benefit. A case in New York is cited which is supposed to be analogous to the present one, the case of *Murphy v. Buckman* (66 New York, 297.) In the contract in that case, a building contract, it was provided in reference to the contractor, that should he at any time during the progress of said work refuse or neglect to supply sufficient materials or workmen, the owner should be at liberty to provide materials and workmen, after three days' notice in writing being given, to finish said work; and the amount should be deducted from the amount in the contract.

In that case, the contractor having been delinquent in supplying materials and workmen, the owner gave him the notice provided for in the contract, and, upon the continued delinquency of the contractor, the owner furnished the needed materials and workmen, and after the completion of the work, when the cost of completion was deducted from the contract price, there was found to remain in his hands a considerable sum of money which it was held that the contractor was entitled to recover. The court said that the defendant, by electing to go on under the clause of the contract to which I have called attention, waived his right to insist upon a forfeiture for the failure of the contractor. The owner was not precluded from claiming damages thereafter from the contractor for defective performance, or from a suit to recoup himself for work done under the contract; but he could not avail himself of the right given him by the contract to go on and complete the work, and then refuse to account to the contractor upon the ground that the contract was forfeited; for, the court say, "the election to do the work at the contractor's expense under the clause referred to, assumed that the contract was then in force."

There are two features in which this case differs from that at bar. In the first place, in the New York case, the stipulation was that the owner might, upon giving due notice to the contractor, complete the house at the contractor's expense and deduct such expense from the contract price; which by necessary implication assumes that the balance of the

contract price is still the property of the contractor and that the work is done in pursuance of the contract, the owner substituting himself for the contractor in the work; and the owner having done that, it did not lie in his mouth to say that the contract was not in existence and the contractor not entitled to the balance remaining after the work was done. In the present case the stipulation is not that the expense of completing the work shall be deducted from the contract price, but that it shall be deducted from *any money belonging to the contractors which the owner may have in his hands at the time of the contractor's failure or refusal to finish the work*. This, of course, assumes that the contractor is entitled to the money retained by the owner for work already done, money retained under the 25 per cent. clause; but it does not assume the right of the contractor to the balance of the contract price for work which he did not do and which the owner was compelled to have done by other persons. On the contrary, by implication it excludes any recognition of the contractor's right to that unearned balance. Nevertheless, it might be conceded that if there had remained in the hands of the defendant any money due the contractors for work already executed, and he had applied that money to the completion of the houses, the argument would have great force, that the contractors' money finished the work and that therefore it should be held, to have been finished in contemplation of law by them, and, hence, that they would be entitled to the balance of the contract price. In the New York case it was provided in the contract that the owner should give certain notice to the contractor to go on with the work and that upon the contractor's failure to do so, the owner might then go on and complete it himself, and, therefore, the court assumed that it was in the election of the owner either to pursue that course or to fall back upon his common-law right, and the court held that he had elected to proceed under this stipulation in the contract and, therefore, could not fall back upon his common law right. But in the present case, that element is wanting. And as to the money mentioned in the stipulation, there was no money remaining in the owner's hands at the time the contractors refused to proceed with the work; therefore, as matter of fact, the money of the contractors did not go to the completion of the work, and the reason which existed in the other case, and which might exist under different circumstances in this case for holding that the completion of the houses was the work of the contractors, wholly fails.

The owner in this case did not assume to proceed under this special provision of the contract. He had a right either to do that, or fall back upon his common law right and rescind the contract and proceed to finish the work for his own benefit. He did not notify the contractors that he meant to proceed under this stipulation; he had no money of theirs with which to indemnify himself for the cost of completing the work; he did not proceed under any sub-contracts made by the contractors; but he entered into possession of the houses (which if he were proceeding under the contract he would have had no right to do until the completion of the contract); he made new contracts in his own name with third parties and at his own cost and expense, and when he effected a saving it is perfectly obvious that he did not do it for the benefit of those contractors, but for his own benefit, and therefore that he expected and intended to exercise his common law right for his own benefit and not for the benefit of the contractors. And this it is clear he had a perfect right to do.

Some question might be made as to whether the existence of this order in favor of the plaintiff would make any difference as to the defendant's power of electing to proceed under the contract or to fall back upon his common law rights; but the case does not present the facts for raising that question, because it does not appear that the defendant ever had it in his power to have the work completed with the contractors' money. If he had had money belonging to the contractors in his hands it is questionable whether that might not have made it obligatory on him to proceed under the contract, but as he had no money of the contractors in his hands after he accepted this order, and no power of election, this question does not rise upon the facts presented.

As it now stands it appears to us that the owner, upon the default of the contractors, proceeded under his common law right to rescind the contract, and take possession of the property and complete the houses for his own use and benefit, and that the contractors had no further claim upon him whatever, so that when he effected a saving it was for his own advantage and not for that of the contractors, and does not come in any way within the scope of this stipulation in the contract. Therefore there was an error in this instruction of the court below which entitles the defendant to a new trial.

But this does not end the case. It appears by the contract that the defendant had the right to reserve 25 per cent. of such installment to be held until thirty days after the

completion of the houses; evidently to secure the performance of the contract. In that condition of things he accepts an order from the contractors in favor of a sub-contractor agreeing to deduct the amount of the sub-contractors' claim out of payments which will be due to the contractors *on the completion of the houses by them*. Now if he paid any money after that to the contractors which he might have retained and which was payable only on completion of the contract by them, it would seem that he paid that in his own wrong and that upon proof of that fact the sub-contractor might maintain an action against him to the extent of any money so paid away to the wrong of the sub-contractor. But the evidence set out in the bill of exceptions does not disclose what the facts are in that respect, and it remains for the plaintiff to bring out the necessary facts on a new trial of the cause.

The CHIEF JUSTICE dissented, saying that:

The plaintiff had furnished material which had entered into the construction of these houses—material which the defendant was now enjoying the benefit of. That but for this material being in the houses at the time defendant undertook to complete them, defendant would have had to purchase similar material himself, consequently he was saved just that much in the necessary cost of completion. It was a saving effected by defendant availing himself of the material furnished by the plaintiff, and for which the defendant ought, therefore, to pay, at least to the extent of the money saved on the original contract.

#### The Alabama Claims.

The Court of Commissioners of Alabama Claims convened on Thursday, the 18th inst. Nearly six thousand claims have been presented, the majority of them during the past two weeks, the time for filing having expired on the 13th inst. Counsel for the United States stated that he knew of no case in which counsel for claimant was ready to proceed, but announced his own readiness to go on in any case where testimony and briefs had been filed, and that he would take up any case on the docket, waiving all formal notice, and only requiring a reasonable time to read the papers &c.

The court expressed the strongest desire on its part to proceed to a consideration of the cases in order to complete its business within time limited by law—eighteen months from the present time.

**Abstracts of Supreme Court Decisions.****When Defaulting Officers may be charged with Interest.**

In the case of the *United States v. Power et al.*, which was an action upon the official bond of an acting assistant paymaster in the navy, and in that of the *United States v. Knowles et al.*, which was an action upon the official bond of a military storekeeper in the army, the Supreme Court of the United States has affirmed the principle of the case of the *United States v. Curtis*, 100 U. S. R., 119, that where an officer of the Government has money committed to his charge, with the duty of disbursing or paying it out as occasion may arise he cannot be charged with interest on such money until it is shown that he has failed to pay when such occasion required him to do so, or has failed to account when required by the Government, or to pay over or transfer the money on some lawful order: mere proof that the money was received by him raises no obligation to pay interest in the absence of some evidence of conversion or some refusal to respond to a lawful requirement; the obvious reason for this is that the Government places the money in the hands of this class of officers and all others who are disbursing officers, that it may remain there until needed for use in the line of the officer's duty, and until that duty requires such payment, or a return of the money to the proper department of the Government, he is in no default and cannot be required to pay interest.

There being no evidence in either case of a demand or conversion earlier than that made by the service of the writ, the judgment of the court below, allowing interest only from that time, was affirmed.

Opinion by Mr. Justice MILLER. (Oct. Term, 1882.)

**Test of Jurisdiction when Dependent upon Amount in Controversy.**

The Revised Statutes of Ohio provide that if a county auditor has reason to believe or is informed that any person has given to a tax assessor a false statement of his personal property, moneys, etc., or that an erroneous return has been made by any assessor of any property, money, &c., which are by law subject to taxation, he may proceed to correct the return and charge such persons on the tax duplicate with the proper amount of taxes; and to enable him to do this he is authorized and empowered to issue compulsory process, and require the attendance of any person whom he may suppose to have knowledge in the premises, and to examine such persons on oath, &c.

The auditor of Mahoning county, under the authority of this statute, called on the cashier of the First National Bank of Youngstown to appear and testify, and to bring with him the books of the bank, showing its deposits. The bank filed a bill in equity to enjoin the auditor, alleging that the proceeding would unlawfully expose its business affairs, lessen public confidence in it as a depository of moneys, diminish its deposits, and greatly impair the value of its franchises. The circuit court of the United States for the northern district of Ohio, where the action was brought, dismissed the bill and the bank appealed to the Supreme Court, and in the latter court a motion to dismiss the appeal for want of jurisdiction, because the value of the matter in dispute did not exceed five thousand dollars, was granted.

Mr. Chief-Justice WAITE, in delivering the opinion of the court, says:

"In *Barry v. Mercein*, 5 How., 120, it was decided that to give this court jurisdiction in cases dependent upon the amount in controversy, 'the matter in dispute must be money or some right, the value of which, in money, can be calculated and ascertained.' To the same effect are *Pratt v. Fitzhugh*, 1 Black, 278; *DeKrafft v. Barney*, 2 id., 714; *Potts v. Chumassero*, 92 U. S., 361.

"The present suit is not for money, nor for anything the value of which can be measured by money. The bank has no interest in the taxes to be placed on the tax duplicate. There is no property in dispute between the auditor and the bank. If the cashier is compelled to testify and to produce the books to be used in evidence for the purposes required, the damages, if any, resulting to the bank, would be, in the highest degree, remote and speculative. Certainly no suit for even nominal damages could be sustained against the auditor on account of what he had done. All the cashier is required to do, is to give testimony in a proceeding instituted under the authority of law by the auditor to perfect the tax lists of the county. It is supposed the books of the bank contain evidence pertinent to this inquiry, and appropriate measures are taken to have them produced for examination. The case is in no respect different in principle from what it would be if the evidence was called for in an ordinary suit in a court of justice between individuals.

"Affidavits can only be used to furnish evidence of value not appearing on the face of the record when the nature of the matter in dispute is such as to admit of an estimate of its value in money." *First Nat. Bank of Youngstown v. Hughes et al.* (Oct. Term, 1882.)



In the case of the Town of Elgin v. Marshall et al., decided at the same term, the court also dismissed the writ of error for want of jurisdiction, notwithstanding an ingenious argument of counsel claiming that under the peculiar circumstances of the case it ought to be maintained. The decision illustrates the strictness with which the court is disposed to draw the line.

Action was brought in the court below to recover the amount due upon certain coupons or interest warrants, detached from municipal bonds alleged to have been issued by the town of Elgin in aid of a railroad company; the defense was that the bonds were void, the statutes under the assumed authority of which they had been issued being, as was alleged, unconstitutional.

The cause was tried by the court without a jury, and part of its finding of facts was that the plaintiffs were the owners of fifteen bonds of \$500 each and of the coupons mentioned, and judgment was rendered on the latter for the sum of \$1,660.75, being for the interest due on the bonds.

Counsel for the town argued that while the amount of the judgment was less than \$5,000, yet the value of the matter in dispute was in excess of that sum, because the holders and owners of the bonds, to the amount of \$7,500, had obtained by the judgment an adjudication conclusive upon the town, and which was an estoppel on the question of its liability to pay the entire amount of the principal sum; that as the point actually litigated and determined in the action was the validity of the bonds, it would be conclusive in any subsequent action between the parties upon other coupons or upon the bonds themselves. *Cromwell v. County of Sac*, 94 U. S., 351. In support of the jurisdiction, the case of *Troy v. Evans*, 97 U. S., 1, was cited, in which the court said that "*prima facie* the judgment against a defendant, in an action for money, is the measure of our jurisdiction in his behalf. This *prima facie* case continues until the contrary is shown; and if jurisdiction is invoked because of the collateral effect, a judgment may have in another action it must appear that the judgment conclusively settles the rights of the parties in a matter actually in dispute, the sum or value of which exceeds the required amount."

The court (Mr. Justice Mathews delivering the opinion), however, held, that the point was not involved in the decision of that case, and that what was quoted "seems to have rather been intended as a concession for the sake of argument than as a statement of a conclusion of law. The inference now sought to be

drawn we are unable to adopt;" that in the opinion of the court the sections of the Revised Statutes limiting the jurisdiction of the court upon appeal, etc., to cases where the matter in dispute, exclusive of costs, exceeds the sum or value of \$5,000, have reference to the matter which is directly in dispute in the particular cause in which the judgment or decree sought to be reviewed has been rendered, and do not permit the court for the purpose of determining its sum or value, to estimate its collateral effect in a subsequent suit between the same or other parties, and that to entertain jurisdiction in the present case would be to unsettle the principle of construction in the following cases which are referred to and commented upon in the opinion:

*Lee v. Lee*, 8 Pet., 44; *Pratt v. Fitzhugh*, 1 Black, 271; *Barry v. Mercien*, 5 How., 103; *Sparrow v. Strong*, 3 Wall., 97; *Williamson v. Kincard*, 2 Dall., 20; *Conrse v. Stead*, 4 Dall., 22; *U. S. v. Big Union*, 4 Cr., 216; *Grant v. McKee*, 1 Pet., 248; *Stinson v. Densman*, 20 How., 461; *Gray v. Blanchard*, 97 U. S., 504; *Tintsman v. Bank*, 100 U. S., 6; *Russell v. Stansell*, 105 U. S., 303; and *Parker v. Morrill*; *Ex parte B. & O. R. R. Co.*; *Adams v. Crittenden*; *Farmers' L. & T. Co. v. Waterman and Schered v. Smithe*, decided at the present term.

**COMPROMISE OF CLAIM FOR CRIM. CON. AS CONSIDERATION FOR NOTE.**—In an action upon certain promissory notes, given to the husband in compromise of an alleged claim against the defendant for criminal intimacy with the wife of the payee, where the husband agreed, as part of the settlement, never afterward to speak of the intimacy, and that if he did so the notes should be rendered void, it was held by the Supreme Court of Indiana, in *Wells v. Sutton* (Dec., 1882), that the contract was not void as against public policy, and that if the husband did so speak in contravention of the agreement it would be a good defense to the action.

**A CORPORATE KISS.**—In *Croaker v. Chicago, &c., Railway Company*, 36 Wis., 657, where the conductor of a railroad train kissed a female passenger against her will, the court in an elaborate opinion, held the railroad company liable for compensatory damages.

**THE First Comptroller of the Treasury** has decided that a Congressman rendering services to the Government other than those appertaining to his office was entitled to pay therefor.

**Incompetency of Witness from Defect of Religious Belief.**

LUCAS v. PIPER.

*Common Pleas No. 4 of Philadelphia.*

In order to render a witness competent to testify, his faith should be a religious belief of some kind in the existence of an Omniscient Being, who will reward and punish, either here or hereafter, for good and evil deeds.

Rule for a new trial.

Opinion by BRIGGS, J. December 30, 1882.

The sole question raised at the argument is, was Robert Becker a competent witness? When he was offered, the defendant's counsel objected to his being admitted to testify because of his defect of a religious sentiment and belief.

The only evidence in support of the objection was that given by Becker himself, which was, in substance, that he believed in the Creator of the universe, and in a Supreme Power which would punish him here for false swearing, etc., but did not believe in God as commonly understood by people, nor in a personal God, nor in God as an entity. With some doubt, I nevertheless admitted the witness.

Was this proper in the light of the law?

Something more is required to render one competent as a witness than a belief in a Supreme power, simply as a power on principle, which may be the resistless forces of natural laws, as exhibited by the motion and operation of the elements, and to violate which will surely bring punishment here to the transgressor. The belief required by our law is a belief in the existence of an Omniscient Supreme Being, who will impose Divine punishment for perjury, either in this world or in the next. If the belief be short of this it falls under the ban of legal condemnation.

Mr. Greenleaf, Vol. 1, on Evidence, pl. 368, thus expresses himself in discussing the point under consideration: "The third class of persons incompetent to testify as witnesses, consists of those who are *insensible to the obligation of an oath*, from defect of religious sentiment and belief. The very nature of an oath, it being a religious and most solemn appeal to God as the Judge of all men, presupposes that the witness believes in the existence of an Omniscient Supreme Being, who is the rewarder of truth and the avenger of falsehood, and that by such a formal appeal the conscience of the witness is affected. Without this belief the person cannot be subject to that sanction which the law deems an indispensable test of truth. It is not sufficient that the witness believes himself bound to speak the truth from a regard to character, or from

fear of punishment which the law inflicts upon persons guilty of perjury. Such motives have, indeed, their influence, but they are not considered as affording a sufficient safeguard for the strict observance of truth. Our law, in common with the law of most civilized countries, requires the additional security afforded by the religious sanction implied in an oath, and, as a necessary consequence, rejects witnesses who are incapable of giving this security. Atheists, therefore, and all infidels, that is, those who profess no religion that can bind their consciences to speak the truth, are rejected as incompetent to testify as witnesses."

In the 1 Law Reports, p. 346-7, this view is expressed: "The law is wise in requiring the highest attainable sanction for the truth of testimony given, and is consistent in rejecting all witnesses incapable of feeling this sanction, and of receiving this test, whether this incapacity arises from the imbecility of the understanding or from its perversity. It does not impute guilt or blame to either. If the witness is evidently intoxicated, he is not allowed to be sworn, because, for the time being, he is incapable of feeling the force and obligation of an oath. The *non compos* and the infant of tender age are rejected for the same reason, but without blame. The atheist is also rejected, because he too is incapable of realizing the obligation of an oath in consequence of his unbelief. The law looks only to the fact of incapacity, not the cause or the manner of avowal. Whether it be calmly insinuated with the elegance of Gibbon, or roared forth in the disgusting blasphemies of Paine, still it is atheism; and to require the mere formality of an oath from one who avowedly despises or is incapable of feeling its peculiar sanction would be but a mockery of justice."

Mr. Starkie, in his work on evidence, \*116, says: "It seems that the witness ought to be admitted if he believes in the existence of a God who will reward or punish him in this world, although he does not believe in a future state. But it is not sufficient that he believes himself bound to speak the truth merely from a regard to character, or the interest of society, or fear of punishment by the temporal law."

In our own case of Blair v. Seaver, 26 St. R., 77, the test of competency is said to be, "whether the witness believe in the existence of a God who will punish him if he swear falsely. An oath is a solemn appeal to the Creator of the universe that the truth only shall be witnessed. No one is competent to take it who has not a sense of accountability to the Omniscient Being, who will certainly punish him if he commit perjury. But whether

the punishment will be temporary or eternal, inflicted in this world or that to come, is immaterial on the test of competency."

It is useless to multiply authorities, for those already referred to exhibit the law as recognized by all civilized countries, except in those States where it has been modified by express legislation.

It hence follows, that the faith of a witness should be a religious belief of some kind in the existence of an Omniscient Being, who will reward and punish, either here or hereafter, for good and evil deeds. A belief in a power as exhibited by the force of nature and call it Supreme, and yet ignore that that power is the handiwork of the Omniscient and Omnipotent God, is totally insufficient to meet the law's requirements. Nor is any advance gained by asserting that he who violates the law of nature will be punished, for admittedly such punishment will follow with unerring certainty. If one jump overboard in mid-ocean, or thrust his hand into a raging fire, or violate any law of his natural existence, he would be immediately punished, just in proportion that he violate these natural laws. It is in this sense that Shelly, with his charming grace and elegance of style and sublime poetic conception, wrote his *Queen Mab*. He assumes that

"—All sufficing nature can chastise  
Those who transgress her laws—she only knows  
How to proportion to the fault  
The punishment it merits."

The sentiment running through this masterpiece of the poet, and which has been said to be "his honor as a poet and disgrace as a man," totally ignores the existence of a God; and yet he maintains the doctrine of punishment—that happiness, and misery, and rewards and punishment, are alone the sequents of human action, without Divine interposition, and that death is an endless sleep. A belief in such a punishment is not a belief in Divine punishment, and is clearly insufficient to render one entertaining it competent to testify under our law.

While the witness, Becker, said he believed in a Supreme power that would punish him here for false swearing, he would not say that he believed that power was Divine, and he totally denied the personality of God and of God as generally understood by people. With such a belief how can he be said to be in fear of Divine punishment for testifying falsely? His belief being defective in this respect, it falls short of one of the legal requirements which is indispensable to exist to entitle him to be examined as a witness in the courts of

this State. It follows that I erred in receiving his testimony, and that a new trial should be ordered.

Rule absolute.

#### Ticket Scalping.

In the case of *Sleeper v. Penn. R. R. Co.*, plaintiff entered a train on defendant's road at Jersey City bound for Philadelphia, and tendered the conductor two tickets purporting to convey him to his destination, which he had purchased from a party in New York city at reduced rates. The conductor refused to accept the tickets and ejected him from the cars at Elizabeth, N. J. The Court of Common Pleas of Philadelphia county, where he brought suit, upon this state of facts ordered a non-suit, holding that as the Pennsylvania law of May 6, 1863, made it unlawful for an unauthorized party to sell railroad tickets in that State, a suit could not be maintained upon a ticket sold in another State where such sale is lawful.

The plaintiff took the case to the Supreme Court of the State upon a writ of error, urging that a railroad ticket was negotiable (2 Red. on Railroads, p 374, no. 4), that to bring the contract within the exception to the universal validity of contracts, it must appear to be clearly founded in moral turpitude and not simply contrary to the statutes of the country where it was sought to be enforced. (Story on the Conflict of Laws, sec. 258 A; *Kentucky v. Bassford*, 6 Hill, 526; *McIntyre v. Parks*, 3 Metc., 207; *Hill v. Spear*, 11 Am. Law Reg., n. s., p. 497; *Smith v. Godfrey*, 28 N. H., 384; Wharton on Conflict of Laws, sec. 485), and that the act made it unlawful to sell tickets, and imposed a penalty only on the seller; the purchaser violated no law and was entitled to relief.

On behalf of the company it was contended that the action could not be maintained because founded upon a transaction prohibited by the State, and that the principle of public policy was that no court will lend its aid to a party who grounds his action on an illegal or immoral act. *Thorne v. Travellers Ins. Co.*, 30 Sm., 15.

Trunkey, J., delivering the opinion of the court, (12 Weekly Notes of Cases, 23), after stating the point in issue, and the terms of the act of 1863, says:

"That the plaintiff's ticket on its face entitled him to the rights of a passage between the points named is unquestioned. The only reason for denying him such right was that he bought from one who sold in violation of the statute in Pennsylvania. It is not said that the vendor in New York is actually guilty of

the statutory offence, but that the defendant, being a corporation in Pennsylvania, and the stipulated right of passage being partly in Pennsylvania, her courts will not enforce a contract resting upon acts which the legislature has declared criminal.

The presumption is that the ticket was properly issued by the company, and that the holder had the right to use it. Such tickets are evidence of the holder's title to travel on the railroad. Prior to the statute in Pennsylvania, it was lawful for holders to sell them. The property in them passes by delivery. The act of 1863 confers no right upon a railroad company to question passengers as to when or where or how they procured their tickets, or to eject them from the cars upon suspicion that the tickets were sold to them by a person who was not an agent for the company.

At common law, which is deemed in force in absence of evidence to the contrary, the contract made by the plaintiff in New York was valid. It was executed, no part remained to be performed. It vested in him the evidence of title to a passage over the railroad. His act had no savor of illegality or immorality. It was a mere purchase of the obligation of a common carrier to carry the holder according to its terms. The defendant issued the obligation, received the consideration and became liable for performance at the date of issue. As transferee the plaintiff claimed performance. This is the contract which is the basis of the cause of action. It is purposely made so as to entitle the *bona fide* holder to performance and for breach to an action in his own name. Let it be assumed that the defendant made the contract in Pennsylvania. It is quite as reasonable to assume that tickets for passengers coming from New York into Pennsylvania were sold in New York. But wherever the contract was made, it is true, as claimed by the defendant 'this action is to enforce, not the contract between the ticket scalper and the plaintiff in error, but between the defendant in error and the plaintiff in error.'

The sale of the ticket to the plaintiff in New York was lawful. That being an executed contract, there is no question respecting its enforcement. But surely it is not an exception to the rule that contracts valid by the law of the place where they are made, are generally valid everywhere. Then, as the plaintiff has a valid title to the ticket, the contract between the defendant and himself is valid.

Judgment reversed, and procedendo awarded."

#### Action for Malicious Prosecution.

BROBST vs. RUFF.

Supreme Court of Pennsylvania.

In an action for malicious prosecution the defendant cannot be permitted to prove that he acted under the advice of a magistrate.

In such an action malice may be inferred from the want of probable cause; but if there be probable cause, it matters not that the prosecution be malicious.

Whether certain facts constitute probable cause must be determined by the court; but whether such alleged facts exist, it is for the jury to find.

Error to the Court of Common Pleas of Lehigh County.

Opinion by MERCUR, J. October 2d, 1882.

To maintain an action for malicious prosecution, the plaintiff must prove the prosecution to have been made without probable cause, and that the prosecutor was actuated by malice towards the plaintiff. Malice may be inferred from the want of probable cause; but if there be probable cause, it matters not that the prosecution be malicious. If the act be lawful the motives of the prosecutor will not be inquired into. Whether certain facts constitute probable cause must be determined by the court, but whether such alleged facts exist, is for the jury to find. The law applicable to the case was correctly stated by the learned judge, and we discover no error in the admission of evidence.

The main question arises under the eleventh assignment. The plaintiff in error offered to prove substantially that he stated to the justice of the peace before whom the prosecution was about to be instituted, the facts as he had heard them, and he was advised by the justice that they were sufficient upon which to base a criminal prosecution against the defendant in error. The evidence was rejected.

When a prosecutor fully and fairly submits to his counsel, learned in the law, all the facts which he knows are capable of proof, and is advised that they are sufficient to sustain a prosecution, and, acting in good faith on that opinion, does institute the prosecution, he is not liable to an action for malicious prosecution, although the opinion is erroneous. Shall the advice of a committing magistrate have the same effect? We think not. Justices of the peace are not required to be learned in the law. In fact, generally through the State they are not. They are not qualified by a course of study to give advice on questions of law. They do not pursue it as a profession. They are not charged with the duty of advising any person to commence a prosecution. They ought not to act as attorney or agent for one in regard to a prosecution he is about

to institute before them. Their duties are judicial. They may in the discharge thereof reduce the substance of the complaint to writing in the form of an information by the prosecutor. Then they judicially determine whether the facts therein averred be sufficient to justify the issuing of a warrant.

An educated business man may be much better qualified than many inexperienced justices of the peace to advise as to the law. yet I am not aware that the advice of such a person has ever been held to protect against damages for malicious prosecution.

The conclusion at which we have arrived is not in conflict with any decision of this court. It is the logical sequence of the rule declared in *Walter v. Sample*, 1 Casey, 275. In that case the prosecutor had acted under the advice of a member of the bar. The protecting power of the rule extends no further than the advice of one learned in the law. In an action for malicious prosecution the defendant cannot be permitted to prove that he acted under the advice of a magistrate. *Straus v. Young*, 37 Md., 282; *Olmstead v. Partridge*, 82 Mass., 381.

There was no error in permitting the amendment after a trial on the merits.

Judgment affirmed.

## The Courts.

### U. S. Supreme Court Proceedings.

The following persons were admitted to practice during the past week:

Wm. A. Stewart, of New York City, Wm. A. Abbott, of New York City, Oliver D. Smith, of New York City, Geo. P. Smith, of New York City, H. P. Buxton, of Carlyle, Ill., Wm. H. Clark, of New York City, Henry C. Whitney, of Chicago, Ill., Charles E. Duell, of Syracuse, N. Y.  
JAN. 15, 1883.

No. 878. Wm. B. Schmidt et al. v. A. S. Badger, etc. To C. C. U. S. for E. D. La. Judgment affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 918. John H. Hayward v. Alfred H. Andrews. From C. C. U. S. for N. D. Ill. Decree affirmed. Opinion by Mr. Justice Matthews.

No. 127. Geo. F. Potter et al. v. The United States. To C. C. U. S. for D. Minn. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 120. James Turner et al. v. The Farmers' Loan & Trust Co. et al. From C. C. U. S. for S. D. Ill. Decree affirmed. Opinion by Mr. Justice Harlan.

No. 126. The Mayor, &c., of the City of Savannah v. Morris K. Jesup, etc. From C. C. U. S. for S. D. Ga. Decree affirmed. Opinion by Mr. Justice Harlan. Dissenting, Mr. Justice Miller.

No. 81. Thos. Branch et al. v. Morris K. Jesup, etc. From C. C. U. S. for S. D. Ga. Decree affirmed. Opinion by Mr. Justice Bradley.

No. 141. The United States, on behalf of Porter et al. v. The Steam Vessels of War, Seaboard et al. From S. C. of D. C. Decree affirmed. Opinion by Mr. Justice Field.

No. 1173. S. D. Miller et al. v. The National Bank of Lancaster et al. To C. of App. of Ky. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 7. Ex parte. Selah C. Carll. To Marshal S. D. N. Y. Motion for rule to show cause why writ of habeas corpus should not issue. Denied. Opinion by Mr. Chief Justice Waite.

No. 694. The City of Ottawa v. Wm. H. Cary. C. C. U. S., N. D. Ill. Judgment of October 30, 1882, rescinded, and leave to docket granted.

No. 1191. The Steamboat, James Jackson, etc., v. George Rice. C. C. U. S., S. D. Ohio. Decree docketing and dismissing case rescinded and leave to docket granted.

No. 1086. Albert Grant v. The Phoenix Mutual Life Insurance Co. S. C. of D. C. Motion to recall mandate filed and submitted.

No. 45. Benjamin Hayden v. Charles Manning. C. C. U. S. for Oregon. Argued and submitted.  
JAN. 16, 1883.

No. 1130. John Bush v. The Commonwealth of Kentucky. C. of App. of Ky. Argued and submitted.

No. 908. Toney Pace v. The State of Alabama. S. C. of Ala. Argued and submitted.  
JAN. 17, 1883.

No. 1091. The County of Alexander v. John F. Kimball. C. C. U. S., S. D. Ill. Submitted under 20th rule.

No. 101. The Atlantic Works v. Edwin L. Brady. No. 102. Edwin L. Brady v. The Atlantic Works. C. C. U. S. for Mass. Argued and submitted.

No. 143. Henry Z. Chapman et al. v. The Board of Commissioners of Douglass County, Neb. C. C. U. S. for Neb. Argued and submitted.  
JAN. 18, 1883.

No. 148. Henry J. Rodgers v. William F. Durant, impleaded with Jas. W. Davis, etc. C. C. U. S., N. D. Ill. Argued and submitted.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM

Present, CARTER, C. J., and Justices COX and JAMES.

JAN. 15, 1883.

Geo. Killeen, use of Mary McGuire, v. The Glens Falls Insurance Co. Judgment of Special Term affirmed with costs.

John B. Larner, collector, etc., et al., v. John Winn et al. Decree of Special Term affirmed with costs. Opinion by Mr. Justice Cox.

Michael McCormick v. Freedmans Saving & Trust Co. et al. Petition of complainant denied and prayer refused.

United States v. John H. Murphy. Judgment of Special Term affirmed, notwithstanding motion for new trial on exceptions.

United States v. Charles O'Leary. Same.

JAN. 16, 1883.

James O. Hoyt, of New York, was admitted to practice.

Edwin M. Lewis, trustee, etc., v. Harvey Kennedy et al. Argued and submitted.

Lavinia Young v. The Manhattan Life Ins. Co. Argued and submitted.

**Strong v. Barbour.** Cause reinstated and heard without printing.

JAN. 17, 1883.

**United States v. Hugh Strider.** Argued and submitted.

**Abraham Bauer et al. v. Frederick A. Tochifflyl et al.** Decreed that certain defendants were indebted to the complainant Bauer and to the complainant Mattingly, receiver. In all other respects the decree of Special Term was affirmed.

**Nathan C. Draper v. Anthony Hyde.** Motion to vacate decree and for a hearing.

**Henry G. Fisk et al. v. Theodore Hollander.** Decreed that the complainants are entitled, as assignees, to certain letters-patent; a discovery of profits, &c., from the infringement; that the cause be referred to the auditor; that a perpetual injunction enjoining the defendants, the cause be granted.

#### CIRCUIT COURT.—Justice Mac Arthur.

JAN. 13, 1883.

Bills of exceptions were signed in the following cases:

**Anderson et al. v. Smith.**

**Moses v. Spaid et al.**

**Jackson v. Schulze.**

**Browning v. Dist. Col.**

**Hall v. Inland & Seaboard C. Co.**

**Moore v. Met. R. R. Co.**

**Flagg v. Kirk.**

**Beveridge v. Collins.** Judgment by confession.

**Hewitt v. Lewis, administrator.** Judgment on award.

**Wolf v. Walsh.** Ordered to be heard in General Term, 1st instance.

**Daly v. Fitzmorris.** Judgment set aside and reinstated on calendar.

**Gove v. Leatch.** Judgment set aside on payment of ten dollars to defendant's attorney.

**Lawrence & Co. v. Chapman.** Motion for judgment granted.

**Breitbarth v. Hayward.** Motion for new trial granted on conditions.

**Farmers' and Mechanics' Bank v. Hume.** Motion for new trial overruled.

**Fonston et al. v. Oppenheimer.** Motion to quash attachment overruled.

#### EQUITY COURT.—Justice Hagner.

JAN. 10, 1883.

**Wallace v. Hogan.** Sale confirmed and conveyance and reference ordered.

**Smith v. Burch.** Appearance of absent defendant ordered.

**Draper v. Hyde.** Trustee fund directed to be paid in court.

**Sommerville v. Tannant.** Demurrer sustained and bill dismissed.

JAN. 11, 1883.

**Kiesecker v. Kiesecker.** Testimony ordered taken.

**Riley v. Cox.** Same.

**Underwood v. Pratt.** Receiver appointed.

**Seaggs v. Simmes.** Decree of partition passed.

**Turton v. Saunders.** Injunction denied.

**Dobson v. Dungan.** Pleas to bill overruled.

**Redfield v. Redfield.** Report confirmed and distribution ordered.

**York v. Main.** Decree pro confesso against Herschell Main ordered.

JAN. 12, 1883.

**McGraw v. McGraw.** Receiver appointed.

**Lightfoot v. Britt.** Sale finally ratified.

**Shoemaker v. Campbell.** Sale ratified nisi.

JAN. 15, 1883.

**Wolland v. Perry.** Reformation of deeds ordered.

JAN. 16, 1883.

**Adams v. Adams.** Appearance of absent defendant ordered.

**Walker v. Boyle.** Release of lots from lien of decree.

**Pepper v. Shepherd.** Motion to dissolve injunction and discharge receiver overruled.

**Stanbury v. Inglehart.** Leave granted to amend bill.

**Burch v. Burch.** Sale ratified nisi.

**Cohen v. Cohen.** Decree set aside with leave to answer.

#### PROBATE COURT.—Justice Hagner.

JAN. 5, 1883.

**Estate of John M. Lyon.** Will proved. Admitted to probate and letters granted.

**Estate of John W. Wheeler.** Renunciation of one of the executors. Will and codicil admitted to probate and letters granted.

**Estate of Rebecca T. Tompkins.** Petition of father and his appointment as administrator.

**Will of Margaret C. Smith.** Petition of executor and letters granted.

**In re Archie B. Dennis.** Removal of guardian and appointment of Hosea B. Moulton.

**Estate of Henry Helmsen.** Petition of father and his appointment as administrator.

**Estate of Egbert Thompson.** Petition of widow for letters.

**In re Jane Crown, guardian.** Petition to be appointed guardian to orphans of Sylvester Sergeant, and her appointment.

**In re Bennett Lee, guardian.** Petition and appointment to Maggie Lee.

JAN. 8, 1883.

**Will of Frederick A. Fill** filed.

**Will of Victor De L. Gelston.** Copy from Orphans' Court of Baltimore, Md., filed.

JAN. 9, 1883.

**Estate of John H. Wheeler.** Executor bonded and qualified.

JAN. 10, 1883.

**Estate of 40 Hawaiian subjects.** Proofs of publication filed.

JAN. 11, 1883.

**Estate of 40 Hawaiian subjects.** Administration granted to James Lowndes.

**Estate of Thomas Harper.** Petition for probate of will and codicil and for letters.

**Will of Ernest Dickas** filed.

**Will of Ann C. Carroll** filed and admitted to probate.

**Estate of Alexander Eagleston.** Petition of widow for letters and appointment.

**Will of Charles Perry** filed for probate, and proved and letters granted.

**Will of Jane L. Boynton** proved and admitted to probate.

**Estate of Charity L. Farr.** Administrator to settle.

**Estate of Mary T. Johnson.** Proof of publication filed.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JAN. 13, 1883.  
24167. *M. W. Beveridge v. John W. Collins.* Account, \$226. Pliffs atty, W. F. Mattingly.

JAN. 15, 1883.  
24168. *Oscar M. Bryant v. Henry Jones.* Appeal. Pliffs atty, W. T. Bailey.  
24169. *Daniel Linkins v. Emily A. Moxley.* Notes, \$164.96. Pliff atty, W. S. Jackson.  
24160. *Nathaniel P. Hill v. D. W. Bliss et al.* Notes, \$1,000. Pliffs atty, John Selden.  
24161. *Randall & Fish v. A. W. Morgan & Co.* Notes and account, \$203.75. Pliffs atty, F. W. Jones.

JAN. 16, 1883.  
24162. *George W. Hill v. Thomas B. Van Buren.* Trover, \$200. Pliffs atty, P. P.  
24163. *Neal T. Murray v. Robert J. Murray.* Judgment of Justice Walter, \$18.50.  
24164. *Barbour & Hamilton v. The Sovereign's Co.* operative Association. Notes and account, \$658.97. Pliffs attys, Oarust, Miller & Sands.  
24165. *W. M. Galt & Co. v. The Sovereign Co-operative Association.* Notes and account, \$1,305.53. Pliffs attys, Oarust, Miller & Sands.  
24166. *M. Knoedler & Co. v. Henry N. Barlow.* Notes, \$279.54. Pliffs attys, Ross & Dean.  
24167. *William Black v. John J. Pattison.* Damages, \$5,000. Pliffs atty, W. H. Browne.

JAN. 17, 1883.  
24168. *Henry A. Smith et al. v. William F. Clark.* Acc't., \$274.52. Pliffs attys, Albert & Warner.  
24169. *Henry A. Smith et al. v. John F. Spelschouse.* Account, \$473.96. Pliffs attys, Albert & Warner.  
24170. *Bward & Howell v. Edward O. Walker.* Account, \$64.55. Pliffs attys, Albert & Warner.  
24171. *Kaufman & Strauss v. Albertus McCreary.* Acc't., \$466.88. Pliffs attys, Albert & Warner.  
24172. *Michael William v. Archibald M. Bliss.* Note, \$125. Pliffs atty, N. H. Miller.  
24173. *William T. Hamilton v. Albert P. Morrow.* Acc't., \$500. Pliffs attys, Hanna & Johnston.  
24174. *Ahrensdorf & Ascher v. O'iver Dammann.* Acc't., \$160.58. Pliffs atty, R. Coyle.  
24175. *Henry J. Horn v. Wilson Ager.* Notes, \$3176. Pliffs attys, Worthington & Heald.  
24176. *Harris Brothers v. O. Dammann.* Account, \$944.87. Pliffs atty, N. H. Miller.  
24177. *John L. Coumbe v. George Mason.* Ejectment. Pliffs atty, D. O'C. Callaghan.

JAN. 18, 1883.  
24178. *Albert E. Burch v. George L. Sheriff.* Appeal. Defts atty, A. C. Richards.  
24179. *Hoos. Bro & Co v. T. Monroe Elliot.* Note, \$369.45. Pliffs attys, Bradley & Duvall.  
24180. *The National Bank of the Republic v. James N. Carpenter.* Appeal. Defts atty, B. J. Larnelle.

### IN EQUITY.—New Suits.

JAN. 13, 1883.  
8421. *James F. Wollard et al v R. Ross Perry et al.* To reform deed. Com. sols, Haguer & Maddox.  
8422. *Mary A. Reid v. Virginia C. Reed.* For maintenance, &c. Com. sol, W. Willoughby.  
8423. *Pierre C. Dugan v. James T. Ward et al.* To divest and vest fee, &c. Com. sol., J. T. Cull.

JAN. 15, 1883.  
8424. *Henry K. Willard v. Andrew Wyllie et al.* For partition. Com. sols., Worthington & Heald.  
8425. *Robert R. White v. John T. Sullivan et al.* Creditors' bill. Com. sol., F. E. Alexander.

JAN. 16, 1883.  
8426. *Annie E. Sisson v. Armstead C. Sisson.* For divorce. Com. sol., H. B. Moulton.  
8427. *James Phillips et al v. Heiman D. Walbridge et al.* To construe will, &c. Com. sols., Oarust, Miller & Sands.  
8428. *Catherine Omand v. George E. Omand et al.* To sell lot 80, square 180. Com. sols., Appleby & Edmonston.

JAN. 17, 1883.  
8429. *William Lord v. Patrick O'Donoghue et al.* Creditors' bill. Com. sol, W. B. Lord.  
8430. *Margaret A. Wilson v. William A. Wilson.* For divorce. Com. sol, C. F. Rowe.  
8431. *Charles Gersdorff v. Marie Gersdorff.* For divorce. Com. sol., Leon Tobriner.

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ALBERT BURNAY BIBB }  
v. } No. 7760. Equity.  
LUCY HUNTER ET AL }

John W. Pilling, trustee, having reported that he has sold the east part of lot one hundred (100), in Threlkeld's addition to the city of Georgetown, with the improvements thereon, to Albert Burnay Bibb, for the sum of eight hundred (\$800), dollars:

It is, this 2nd day of January, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 5th day of February, A. D. 1883. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. A. B. HAGNER, Asso. Justice.  
True copy. Test: S-S R. J. Meigs, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

H. W. BURCH ET AL. }  
v. } No. 8299. Eq. Doc. 22.  
JOHN E. BURCH ET AL }

Henry C. Coburn, the trustee appointed by the decree of this court in this cause to sell the real estate in the proceedings mentioned having reported to the court an offer from Joseph Forrest, of nine hundred dollars (\$900), for the west half of lot No. 8, in square 225, one of the pieces of property mentioned in the first report of said trustee filed in this cause on December 28, 1882, as having been duly offered for sale at public auction and withdrawn because no bid thereon was received:

It is, on this 16th day of January, 1883, ordered, that the said offer of the said Forrest be and the same is hereby accepted, and it is further ordered and decreed that the sale of said property to the said Forrest be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 16th day of February, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 16th day of February, A. D. 1883.

By the Court. A. B. HAGNER, Asso Justice.  
A true copy. Test: S-S R. J. Meigs, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of January, 1883.

JESSE LEE ADAMS ET AL }  
v. } No. 8409. Eq. Doc. 22.  
JAMES L. ADAMS ET AL }

On motion of the plaintiffs by Mr. B. T. Hanley, their solicitor, it is ordered that the defendants, James L. Adams, Walter G. Adams and Norval W. Adams, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: S-S R. J. Meigs, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business, January 12, 1883.

In the case of Richard T. Morsell, Administrator of Chauly L. Farr, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 9th day of February A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: S-S H. J. RAMSDELL, Register of Wills.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of January, 1883

CHARLES GERSDORFF }  
v. } No. 8431. Equity Docket 22.  
MARIA GERSDORFF }

On motion of the plaintiff, by Mr. Leon Tobriner, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. S-S Test: R. J. Meigs, Clerk.

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

Virginia Taylor }  
vs. } 8,228. Eq. Doc. 22.  
H. A. Taylor et al. }

Upon coming in of the trustee's report made herein this day, relating to the sale of a certain pew, and upon motion of the trustee herein, it is, by the court, this 18th day of January, A. D. 1883, ordered, adjudged and decreed, that the sale of said pew to James M. Johnston as reported by the trustee be and the same is hereby in all things confirmed unless cause to the contrary be shown on or before the 18th day of February, A. D. 1883. Provided, also that a copy of this order be published in the Washington Law Reporter for three successive weeks before the last named day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann M. Green, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1882.  
1-3 WILLIAM W. WISHART, 601 F street n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, December 28, 1882.**

MARTHA F. TUCKER }  
v. } No. 8,045. Eq. Doc. 22.  
CHRISTIAN OLSEN ET AL. }

Bainbridge H. Webb and Franklin H. Mackey, trustees, having reported to the court the sale of the real estate mentioned in the proceedings in this cause for \$610:

It is, this 2nd day of December, A. D. 1882, ordered that said sale, as so reported be finally ratified and confirmed unless cause to the contrary be shown on or before the 25th day of January A. D. 1883, next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
True copy. Test: 1-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 3d day of January, 1883.**

BENJAMIN C. LAZENBY }  
v. } No. 8,360 Eq. Doc. 22.  
MARGARET C. O. LAZENBY ET AL. }

On motion of the plaintiff, by Mr. Chas. A. Walter, his solicitor, it is ordered that the defendants, George M. Sweet, Frank M. Sweet, John O. Tanner, Anna A. Tanner, Fannie M. Fisher and Lillie M. Tanner, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 1-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of January, 1883.**

FRANK E. SMITH }  
v. } No. 8,410. Equity Docket.  
SUSAN BURCH ET AL. }

On motion of the plaintiffs, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Frank Horne, Laura M. Horne, John Francis Horne, Mary L. Horne, William J. Horne and Frances Ellen Horne, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True Copy. Test: 2-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anna Brooke Howard, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 18th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.  
ANNA I. O. HOWARD, Executrix,  
476 Pa. Ave., n. w.

**Legal Notice.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 6, 1883.**

In the matter of the Estate of Egbert Thompson, dec'd. Application for Letters of Administration on the estate of Egbert Thompson, late Captain U. S. Navy, has this day been made by Emily B. Thompson, of Washington City.

All persons interested are hereby notified to appear in this Court on Friday, the 2d day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
PAINE & LADD, Attorneys. 2-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of January, 1883.**

CHRISTIAN A. FLEETWOOD }  
v. } No. 8,416. Eq. Doc. 22.  
J. MALCOLM HAWKESWORTH, }  
SURVIVING TRUSTEE ET AL. }

On motion of the plaintiff, by Mr. Jas. H. Smith, his solicitor, it is ordered that the defendant, J. Malcolm Hawkesworth, surviving trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ELIZABETH A. MOORE ET AL. }  
v. } No. 6,192. Eq. Doc. 18.  
MARY E. HARRISON ET AL. }

James G. Payne and Edward H. Thomas, trustees, having reported the sale of lot six (6), of the subdivision of part of square numbered four hundred and fifty-eight (458), made and recorded by the heirs of William Whetcroft, deceased, to Peter Lattener, for the sum of ten thousand eight hundred (10,800), dollars and the sale of the east half of the west half of lot eight (8), in square numbered five hundred and sixteen (516), fronting 15 feet on "I" street, by the depth of said lot to Robert Herman, for the sum of thirty-seven and one half (37½) cents per square foot:

It is, by the court this 9th day of January, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of February next. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

GEORGE W. SNOUFFER ET AL. }  
v. } No. 7,400. In Equity.  
FELIX GREENAPPLE ET AL. }

Upon consideration of the report of the trustee filed herein on January 4, 1883:

It is, this 10th day of January, A. D. 1883, ordered, that the sale made by them and therein reported be finally ratified and confirmed on February 10, 1883, unless cause be shown on or before that day. Provided, a copy hereof be inserted in the Washington Law Reporter once a week for three weeks prior to that day.

The report states that lot 102, of King's subdivision in square 492, was sold to Isaac Wenger, for \$1,380.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES CORNELIUS ET AL. }  
v. } No. 7,919. Eq. Doc. 21.  
JOHN DE VAUGHN ET AL. }

Upon consideration it is by the court this 2d day of January, 1883, ordered that the sale heretofore made and reported by Woodbury Wheeler and Edward H. Thomas, trustees of lot twenty two (22), in said trustee's subdivision of square seven hundred and ninety-nine (799), at and for the sum of three hundred (300), dollars to John F. Donohoe, be ratified and confirmed unless cause to the contrary be shown on or before the 2d day of February next. Provided, a copy of this order be published once a week for each of three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.



## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.****HENRY W. BURCH ET AL. } No. 8,296. Equity.**

**JOHN E. BURCH ET AL. v. Henry C. Coburn,** the trustee appointed by the decree in this cause to sell the real estate in the proceedings mentioned, having reported to the court that, after complying with the requirements of said decree he sold part of lot five (5), in square three hundred and forty-five (345), to Abraham L. Johnson, for the sum of thirty-seven hundred and twenty-five dollars (\$3,725); also, that he offered for sale at public auction parts of lots one (1), twenty-nine (29) and thirty (30), square two hundred and fifty (250); part of lot four (4), square two hundred and twenty-seven (227), and the western half of lot eight (8), square two hundred and twenty-eight (228), but could not sell the same; that since said endeavor to effect a sale he has received the following offers to purchase at private sale, to wit: parts of lots one (1), twenty-nine (29) and thirty (30), square two hundred and fifty (250), for the sum of four thousand five hundred dollars (\$4,500), from Theodore I. King and Metella King; and part of lot four (4), square two hundred and twenty-seven (227), for the sum of fifteen hundred dollars (\$1,500), from Annie C. Humes;

It is, therefore this 28th day of December, A. D. 1882, ordered, that said offers of Theodore King and Metella King and Annie C. Humes, be and the same are hereby accepted; and it is further ordered and decreed that the sale of said lots to Abraham L. Johnson, Theodore I. King and Metella King and Annie C. Humes, be ratified and confirmed unless cause to the contrary be shown on or before the 27th day of January, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 27th day of January, A. D. 1883.

By the Court, **A. B. HAGNER, Asso. Justice.**  
A true copy. 1-3 Test: **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.****LEONARD SCHELL } No. 7,777. Equity.**

**JOHN EBERT ET AL. v. Leon Tobriner and Richard P. Jackson,** trustees herein, having reported that on Thursday, December 28, 1882, they sold lots 13, in square 983, with the improvements thereon to Nathaniel E. Thompson for \$1,120, lots 12 and 14, in square 983, to Miss Mary Wall, for \$405 and \$330, respectively, and lots 5 and 6, square 983, to Lewis D. Means, for \$400 each;

It is, this 4th day of January, A. D. 1883, ordered that said sale be confirmed and ratified unless good cause to the contrary be shown on or before the 4th day of February, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

The report of the trustees states that the total amount of said sales is \$2,655.

By the Court, **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of January, 1883****MINNIE S. WILLEY } No. 8,366. Eq. Doc. 22.**

**CHARLES F. WILLEY. v. On motion of the plaintiff, by Mr. J. G. Bigelow, her solicitor, it is ordered that the defendant, Charles F. Willey, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.**

By the Court, **A. B. HAGNER, Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,****CATHERINE PFIEFFER } No. 8,167. Eq. Doc. 22.**

**JOHN STRAINING ET AL. v. The order entered herein on the 31st day of October, 1882, conditionally confirming the sale of the real estate made and reported herein by C. C. Cole, trustee, not having been published as provided in said order:**

It is, this 2d day of January, 1883, ordered, that said sale stand confirmed at the expiration of thirty days from this date. Provided, a copy of this order be published once per week for three successively in the Washington Law Reporter within the said thirty days. Said sale was of lot numbered thirty-eight (38), in Homes' subdivision of Mount Pleasant and said report states that it was sold to Elizabeth Straining, at \$1,975.

By the Court, **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, January 9, 1883.****MARGARET L. RAMSEY } No. 7,902. Eq. Doc. 21.**

**ELEANOR LEIB ET AL. v. Susannah Crandell and William H. Weizel,** the trustees in the above entitled cause, having reported to the court that they have sold parts of lots 127 and 128, in Beatty and Hawkins' addition to Georgetown, fronting on High street near Second street to John Archer, who has assigned his purchase to William H. Brewer, at and for the price and sum of thirteen hundred and eighty dollars (\$1,380), and that the said purchaser has complied with terms of sale as prescribed by the decree:

It is, by the court this 9th day of January, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed and the trustees are hereby directed to make a deed of said property to said purchaser, unless cause to the contrary be shown on or before the 9th day of February, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 9th day of February, 1883.

By the Court, **A. B. HAGNER, Asso. Justice.**  
True copy. Test: 2-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 5, 1883.**

In the matter of the Will and Codicil of Thomas Harper, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by Little Markes Harper.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of February next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Record and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, **A. B. HAGNER, Justice.**  
Test: 1-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, December 29, 1882.**

In the case of Ida Harting, Administratrix of Charles Harting, deceased, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 19th day of January, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**J. J. WILMARTH, Solicitor.** 1-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of December, 1882.****VALENTINE McNALLY } No. 8,407. Eq. Doc. 22.**

**ELIJAH J. WARD ET AL. v. On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.**

By the Court, **A. B. HAGNER, Justice.**  
A true copy. Test: 1-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, December 29, 1882.**

In the case of Reginald Fenhall, Executor of Eleanor O. Gillet, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 26th day of January, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 1-3 **H. J. RAMSDELL, Register of Wills.**

# Washington Law Reporter

WASHINGTON - - - - - January 27, 1883

GEORGE B. CORKHILL - - - EDITOR

## Suits to Enforce Liens.

The decree of the Supreme Court of the District of Columbia in the case of *The Freedman's Savings and Trust Company v. Dodge* has been affirmed on appeal to the Supreme Court of the United States.

The court holds that Sec. 808 of Revised Statutes, relating to the District of Columbia, which reads as follows: "The proceeding to enforce any lien shall be by bill or petition in equity, and the decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, shall adjudge that the plaintiff recover his demand against the defendant and that he may have execution thereof as at law," applies to suits for the foreclosure of deeds of trust in the nature of mortgages to secure the payment of money, and authorizes a decree in favor of the plaintiff against the debtor defendant for the payment of the balance of the debt, that may remain due after the application thereto of the proceeds of the sale of the trust property, and an order for execution thereof as at law. The Chief-Justice delivering the opinion says the decree appealed from was a decree in such a suit. (Oct. Term, 1882.)

## Criminal Jurisdiction of the U. S. Supreme Court.

Carl was convicted in the circuit court under an indictment alleging the forging and counterfeiting of bonds of the United States, and made application for a rule to show cause why a writ of habeas corpus should not issue; the grounds of the application were that the circuit court had no jurisdiction to try him for the offense of which he had been convicted and to imprison him therefor, because—

1. The instruments described in the indictment and charged to have been forged show on their face that they are not bonds or obligations of the United States, and, even if genuine, possessed no validity; and

2. It was conceded on the trial that the in-

struments set forth in the indictment were genuine registered bonds, and the forgery complained of consisted in erasing the name of the original payee and substituting that of the prisoner.

The opinion of the court, denying the application, was delivered by Mr. Chief-Justice Waite holding that the court had no general power to review the judgments of the inferior courts of the United States in criminal cases by the use of the writ of habeas corpus or otherwise; that its jurisdiction "is limited to the single question of the power of the court to commit the prisoner for the act of which he has been convicted." *Ex parte Lange*, 18 Wall., 163; *Ex parte Rowland*, 101 U. S., 604; *Ex parte Curtis* decided October Term, 1882.

That "All bonds described in the indictment, except that in the third count, purported to have been issued under the act of July 14, 1870, c. 256, as amended by the act of January 20, 1871, c. 23. This act provides for an issue of bonds by the Secretary of the Treasury 'in such form as he may prescribe.' The bonds now in question appear to be signed by the Register of the Treasury and not by the Secretary. They also have the 'imprint and impression of the seal of the Department of the Treasury of the United States.' In the indictment it is averred that the counterfeits were of bonds of the United States. This is enough for the purposes of the jurisdiction of the circuit court. Whether the bonds counterfeited are in the form of those actually issued by the Secretary of the Treasury under the authority of the act referred to, is a question of fact to be established on the trial. Errors committed on the trial of this issue do not deprive the court of its power to imprison upon conviction, and, as has been seen, such errors are not subject to correction here, either in the present form of proceeding or any other.

"What has just been said applies equally to the instrument described in the third count, which purports to be signed by the acting Register of the Treasury. By the act of February 20, 1863, c. 45, the President was authorized to designate some officer in a department to perform the duties of another in case of death, resignation, absence or sickness.

"The second ground of application presents no jurisdictional question. The indictment charged the prisoner with a crime against the laws of the United States (*United States v. Marigold*, 9 How., 560), and we have nothing to do with questions arising on the evidence presented to sustain the charge."

# Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

GEORGE E. MOORE

v.

ANDREW LANGDON AND AMZI L. BARBER.

At Law. No. 19,911.

{ Decided November 27, 1882.  
The CHIEF JUSTICE and Justices COX  
and JAMES sitting.

1. In an action to recover damages for a private nuisance on the premises of the defendant, it is error to admit in evidence, an official letter addressed by a municipal officer to the defendant notifying him of the existence of a public nuisance upon his property and directing him to abate it. Such a letter, if regarded as an official proceeding is *res inter alios*; if treated as a declaration of the fact it is mere hearsay. It is also objectionable because it refers only to the existence of a public nuisance and could not therefore establish the fact of a private nuisance.
2. That which is a public nuisance affords no ground of action unless it also a private nuisance.
3. A verdict will be set aside when evidence calculated to exercise a decided influence upon the minds of the jury has been improperly admitted.
4. Where one owning a piece of ground lays it off into lots and streets and, after sewerage the streets, sells the lots, each lot being sold with an easement in these sewers, he thereby parts with his right of control over the sewers, although he still retains the technical ownership of the soil of the streets.
5. A person is liable only for that damage which is the direct and proximate result of his acts. Therefore where a sewer is not of *itself* a nuisance, the owner or builder is not liable because a nuisance is created by an improper use of it by others and over which use he has no control.
6. *Semble*, It might be otherwise if in granting an easement in the sewer, he had warranted to the grantee the right to make such improper use of it, or having retained control over it, had knowingly permitted such use.

THE CASE is stated in the opinion

ELLIOTT & ROBINSON for plaintiff:

An action for nuisance lies for him that is hurt by it; it lies against those concerned in erecting it, and those who continue it; it lies against the author of the nuisance, although he has no interest in the property on which it exists, or having once had such interest, has parted with it. *Thompson v. Gibson*, 7 M. & W., 456; *Roswell v. Prior*, 12 Mod., 639. One is not permitted to transfer his wrong over to another, so as to discharge himself. It is not necessary in an action of this nature that a person charged with erecting the nuisance

should be the owner of the freehold, or any part of it upon which the nuisance is erected; it is sufficient if he is a party to the erection of such nuisance, and the disposition subsequently of his interest in the erection constituting the nuisance will not defeat an action for damages arising from such nuisance erected by him. *Dorman v. Ames*, 12 Minn., 451. He who erects a nuisance continues liable as long as the nuisance continues.

. . . It would be very difficult to find a good reason why the original wrong-doer should be discharged by conveying the land. The injury has no connection with the ownership of the land." *Plumer v. Harper*, 3 N. H., 88; *Eastman v. Company*, 44 Id., 144; *Custice v. Thompson*, 19 Id., 478; *Staple v. Spring*, 10 Mass., 72. The fact that the defendant cannot enter to abate the nuisance does not excuse his liability, for it is his own wrong which has involved him in trouble. *Smith v. Elliott*, 9 Pa. St., 345; *Thompson v. Gibson*, 7 M. & W., 456. Where one has erected no nuisance and himself been guilty of none, it has been held that, if he demised his property for the purpose of having it used in such a way as must prove offensive to others, he might himself be treated as the author of the mischief. *Fish v. Dodge*, 4 Denio, 317; and see *Cahill v. Eastman*, 18 Minn., 324.

It is not necessary, then, to set up defendant's title to the property upon which the nuisance exists. *Cheetham v. Hampson*, 4 T. R., 318; *Chenango, &c., v. Lewis*, 63 Barb., 111.

The rule is, that every person who constructs a drain or cess-pool upon his premises and uses it for his purposes, is bound to keep the filth collected there from becoming a nuisance to his neighbors. *Marshall v. Cohen*, 44 Ga., 324; *Wommersley v. Church*, 17 L. T., (N. S.), 190; *Cook v. Montague*, 26 Id., 471; *Draper v. Sheering*, 4 L. T., (N. S.) 865; *Rex v. Pedley, Ad. & El.*, 822; *Ball v. Nye*, 99 Mass., 582; *Tenant v. Golding*, 1 Salk., 360; *Bellows v. Sacket*, 15 Barb., 96.

A. S. WORTHINGTON for defendants :

1. The notice of the health officer was admitted as evidence of the existence of a nuisance. This notice was the result of an *ex parte* investigation by an agent of the health officer, and as to this suit it was plainly *res inter alios acta*.

2. It is well settled that a man is not liable for a nuisance created on his land by another, where the land-owner is not in privity with the wrong-doer. The cases on this subject are collected in *Wood on Nuisances*, sec. 820. And see the leading case of *Russell v. Shen-*

ton, 45 E. C. L. R. See also *Sanby v. R. R. Co.*, 4 L. R. C. P., 640; *People v. Townsend*, 8 Hill, 479; 2 Rob. Pr., 676, 677.

It is believed that no case can be found in which a defendant has been held liable for a nuisance created on his premises by somebody else. A nuisance so created, those who suffer from it may abate. The public may abate it. The land-owner may, too; but he is not bound to do it.

But in this case the sewers in Le Droit Park, the mere existence of which was made the ground of defendant's liability by the court below, are not a nuisance in themselves. It is the putting of filth into the stream that runs through the pipes that causes the alleged nuisance. Who does that? A hundred people in the University grounds, and many persons in Le Droit Park, who built their own houses on their own land. And yet the court said to the jury that if the defendants laid the pipes they are to be held for all the filth that passes through them.

We confess that as to this error we have found no case in point. We doubt whether such an instruction was ever before asked. A question somewhat similar has arisen under the landlord and tenant law, where the use by the tenant of something on the demised premises has resulted in a nuisance. For instance, in *Rich v. Basterfield*, 56 E. C. L. R., 788, a chimney was built by the landlord, and its use by the tenant proved to be a nuisance. The person injured sued the landlord, but it was held that he was not liable. The chimney hurt nobody till fires were built in it, and that was the act of the tenant, not the landlord. To the same effect is *Simpson v. Simpson*, 1 C. B., 347. This distinction between a structure which is a nuisance and one the use of which creates a nuisance, was entirely overlooked at the trial. Yet it runs through the law of nuisance everywhere. If a building be used as a slaughter-house, and by polluting a stream near by prove to be a nuisance, a court of equity will enjoin the use of the structure for that purpose, but will not tear it down. (Wood on Nuisances, section 814. See also sections 789, 790, 815.)

Mr Justice Cox delivered the opinion of the Court.

This is an action brought by Mr. Moore, the owner of a certain tract of land on the outskirts of the city, against the defendants, Langdon & Barber, for an alleged nuisance. The substantial allegations are, that at the time of the commencement of this action the defendants were in possession of a certain tract of land adjoining that of the plaintiff,

known as Le Droit Park, that they had laid down certain main sewers in that park, through which were carried large quantities of impure water, sewage, &c., which collected upon the premises of the defendants and thence flowed over the land of the plaintiff, making a marsh, preventing the comfortable occupation of his house and premises and injuring the pasture of his cattle.

The first question was as to the fact of nuisance, and the first exception taken on the part of the defence was to the admission of evidence supposed to be offered as tending to prove that fact. The evidence objected to, and to the admission of which this exception was taken, is a notice addressed by Dr. Townshend, the health officer of the District, to the defendants, in the following language:

"WASHINGTON, D. C., August 2, 1878.

"To A. L. BARBER & Co.,

"SIRS: There is a nuisance on your premises, Le Droit Park, consisting of contents of sewer emptying on to adjoining premises which has become offensive and injurious to health. You are hereby required to cause said nuisance to be abated within ten days after date of service of this notice; otherwise you will be proceeded against agreeably to law and the health ordinances of the District of Columbia in such case made and provided.

"SMITH TOWNSHEND, M. D.,

Health Officer."

The fact seems to have been that a sanitary inspector examined these premises on two occasions, and on his report this notice was served.

On the part of the plaintiff it is maintained that this evidence was competent at least for one purpose, that is, to show that the defendants had full notice of the existence of the nuisance, so that their persistence in maintaining it after due notice might be held to furnish a ground for exemplary damages. The evidence, however, was not offered professedly for that purpose, nor did the court limit its effect to that result. On the contrary, the court told the jury that there was no case at all for exemplary damages; but the evidence was admitted on the general issue of guilty or not guilty as to the nuisance; and the question is whether it is competent evidence tending to prove the affirmative of that issue, the existence of the nuisance. Now this letter from the Health Officer to the defendants is simply a statement or declaration, as to the fact, by a third person. It is undoubtedly hearsay testimony. If it is to be regarded as an official proceeding, it was *res inter alios* and incompetent testimony as between these

parties; and, treated as a declaration, it is, of course, the purest hearsay. In other words, it simply shows that the health officer said that there was a nuisance on these premises. And this is not all that is objectionable in it; for the health officer does not make the statement from his own personal knowledge, but from information received from somebody else—his inspector. Therefore, this letter merely shows that the health officer said that somebody else said that there was a nuisance on these premises. And even this is not all that is objectionable in the character of this testimony; for the letter of the health officer gives notice of the existence of a *public nuisance on the premises of the defendants*; while it is offered as evidence of the existence of a private nuisance on the premises of the plaintiff. Now, there might be a public nuisance on the defendants' premises without the existence of any private nuisance as to the plaintiff, and a public nuisance would afford no ground for an action by the plaintiff unless it was a private nuisance also. We are unable to see any ground upon which this evidence could have been properly admitted, and as it was calculated to exercise a decided influence upon the minds of the jury, for this reason, if for no other, we think the verdict ought to be set aside.

I proceed to state the views of the court as to some of the other questions that arise in the case.

The allegation is that the defendants were in possession and occupation of the premises and that *they, the defendants*, through these sewers, discharged this offensive matter on the plaintiff's premises. There is no evidence in point of fact that the defendants were in possession of the premises at all. On the contrary, the fact seems to be admitted that the property had been divided up into lots and sold to different parties, and that a large number of houses had been erected on those lots by the purchasers, who had connected their houses by drains with these main sewers, and that *they* were engaged in discharging this offensive matter through these drains and sewers. There was offered in evidence a memorandum on the record of the subdivision of this tract of land, purporting to be signed by the defendants, to the effect that they retained ownership and control of the streets; but, assuming that to be competent evidence, the ownership retained was simply the kind of ownership which the common law contemplates, that is, ownership of the soil, subject to the easements that had been given to the purchasers of the lots. The streets had been

laid out and these sewers constructed and houses erected and sold with reference to these easements, and the defendants thereafter had no more right of ownership or control over the sewers than over the houses themselves. They had simply a technical ownership of the soil subject to these easements. It may be held, therefore, that the defendants had entirely parted with the use and control of these sewers; and, consequently, the case is not complicated by the question of ownership and control of the sewers by the defendants at the time this action was brought. The real question here—a very serious and difficult one—is, how far the defendants, having constructed these main sewers and afterwards parted with the ownership of the property, are responsible in law for a nuisance created by the subsequent use of those sewers by other parties. I think that, taking the most liberal view of the plaintiff's rights, the utmost he could claim would be that the defendants should be responsible for the use of these sewers by the parties for whose use they were intended; but the court below went further. It appeared in evidence that another class of people, occupying a distinct property, namely, the Howard University grounds, had made connection with these sewers. This appears from a portion of the testimony which is set forth in the record:

"Question. That sewer takes all the surface water and all the filth about Howard University grounds, does it not? Answer. Yes, sir. It is what was there before.

"Q. Will you tell the jury that any night-soil in any quantity ever passed over Mr. Moore's place before the construction of this sewer? A. Yes, sir; from the Howard University.

"Q. From what property? A. From pig-pens and from outhouses. They have no sewerage there in the University grounds, and they have to use a surface sewer. They run in all into this drain.

"Q. Did they deposit night-soil on the surface; was it not in boxes? A. It was in boxes, but they were oozing over."

So the evidence tended to show that the night-soil from the Howard University grounds enters into these drains and passes through this sewer also, and from the language of the court below it would seem that the defendants were held liable for that. The language of the court was: "If the jury are satisfied that you [the defendants] laid the pipes there and discharged upon the plaintiff's premises offensive matter, you are liable for all the injury which they have done in the shape of a nuisance to Mr. Moore's land."

"Mr. WORRINGTON: That is not the precise

point. Are they liable for the acts of persons who subsequently built houses there?"

"THE COURT: For the whole matter that passes through the pipes and finds a lodgement upon the premises of the plaintiff."

Now, that left it to the jury—perhaps not very distinctly, but still it left it open to them—to infer that the defendants would be liable for a nuisance resulting from this offensive matter coming from the Howard University grounds. Even if the court were right in thinking that the defendants were responsible for the acts of householders in Le Droit Park, they failed to discriminate between their responsibility for that and their responsibility for the acts of other parties outside; and in that way, injury may be done to the case of the defendants.

But there remains another very interesting question, viz., whether, for the acts of these people in Le Droit Park, who used these sewers, the defendants, who sold them the property, are responsible?

This question is not free from difficulty: Indeed, it is a very difficult one. There is an apparent discrepancy in the authorities. There is, however, a principle in the law of torts by which, we think, this question may be determined and the authorities reconciled. The principle is, that a person is only responsible for that damage which results proximately and directly from his acts. If it is sought to make a party responsible for a given injury, the question is whether his act is the direct and proximate cause of the injury. If it is, he is responsible. If, however, other independent agencies and volitions have intervened between his act and the result complained of, and his act is only a remote cause of the result, then he is not responsible. Hence, some of the best considered cases draw a distinction between those things which are nuisances *per se*, and those which only become nuisances by the use made of them. They hold, for instance, that if a man creates a structure which is itself a nuisance, without the intervention of the acts of other parties, he is responsible for the consequences, whether the nuisance be erected on his own land which is afterwards sold to somebody else, or erected in the first instance on the land of another party; but if the structure is of itself innocuous, and the nuisance arises from the use made of it subsequently by the agency of other parties, entirely optional with them, then the author of the erection is not responsible unless he is in some way connected with the use which makes the nuisance. For example, there is cited the case of a tunnel constructed on an island in the middle of a river, so con-

structed that at a certain stage of the tide, or of a freshet, the whole structure collapsed of itself, without the act of any third party and the water rushed in and damaged the property of the plaintiff. There was no evidence of anybody else's agency in making this nuisance; the very thing created by the defendant was shown to be of itself a nuisance, and his act was deemed to be the proximate cause of the nuisance, although the damage occurred some time after the erection was made by the defendant. Other cases have been cited in which landlords have been held responsible for nuisances on premises leased by them for trades which were themselves noxious, and landlords have been held responsible upon the ground that they were receiving profit from such use of the property, and were, therefore, connected with the use constituting the nuisance. In other cases where a person has conveyed property with a general warranty, it has been held that he was responsible for the use. A very complete discussion of this subject is found in the case of *Rich v. Basterfield*, 56 English Common Law Reports, 783. In that case the landlord built a chimney, which of itself hurt nobody until the fires were built in it. The tenant took possession and made his fires, and the smoke from the chimney became a nuisance. The court reviewed the decisions up to that time and discussed them with great ability, and took the broad distinction between things which are nuisances in themselves, and things which only become nuisances by the use that is made of them, and held that in that case the landlord was not responsible, because his act was not the proximate cause of the injury complained of.

Now, to apply this principle to the present case. Here was a park laid out in building lots for suburban residences—not city lots, but large lots such as are commonly laid out and built upon in the suburbs of cities. The purchasers of these lots were not bound to connect their premises at all with these sewers. It was optional with them whether they would introduce the Potomac water into their houses, or whether they would use the outhouses which are commonly used in suburban places and villages. They chose, however, to introduce the water, and to make these connections with the sewer, without which there could have been no nuisance from that source. They chose to introduce the water of the Potomac river into their houses, and to use these drains and sewers to convey away offensive matters. But for their active agency in promoting these results there would have been no nuisance. The act of the defendants in the first instance in laying out the sewers, if

it was a cause at all, was a remote cause, and it does not seem that they should be held responsible for consequences resulting from the intervention of other persons. If this be the correct view of the law, the action could not be maintained upon the facts set forth in this bill of exceptions; though other facts may put a different complexion upon the case. As, for instance, if the defendants had warranted the right to use the pipes to the lot holders, or still retained control over them and knowingly permitted them to be used offensively, &c., or other equivalent facts which would connect them directly with the use complained of.

## United States Supreme Court.

No. 21.—OCTOBER TERM, 1892.

THE CHICAGO, DANVILLE and VINCENNES  
Railroad Company, James W. Elwell and  
R. Biddle Roberts, Appellants,

v.

WILLIAM R. FOSDICK, JAMES D. FISH, FRED-  
erick W. Huidekoper, Thomas W. Shannon  
and John M. Denison.

*Appeal from the Circuit Court of the United  
States for the Northern District of Illinois.*

1. An appeal may lie from a decree in an equity cause, notwithstanding it is merely in execution of a prior decree in the same suit, for the purpose of correcting errors which originate in it; but when such decrees are dependent upon the decree, to execute which they have been rendered, they are vacated by its reversal; in which case, the appeal which brings them into review will be dismissed for want of a subject-matter on which to operate.
2. A personal decree for a deficiency, due upon a mortgage debt, remaining after execution of a decree of foreclosure and sale, is of this description; but when rendered in favor of other parties than the complainant, will be reversed for the same error that required the reversal of the decree of foreclosure and sale.

Mr. Justice MATTHEWS delivered the opinion of the Court.

This appeal was heard during the last term with the appeal from the decree of foreclosure and sale in the same case, having been taken from three decrees rendered after the sale in the same suit. Huidekoper, Shannon and Denison, the purchasers of the mortgaged property sold under the decree of foreclosure, who are appellees in this appeal, were not parties to the former appeal. All the decrees appealed from, including those now in question, were included in the order of reversal made at the former hearing; but on a petition for rehearing it was called to the attention of the court that the transcript of the record was

imperfect and incomplete, having omitted the decree confirming the sale, and that the petition for the present appeal contained a misrecital, that the decree entered April 12, 1877, was the decree "confirming the report of the sale of the property of the defendant railroad company." The order of reversal was, therefore, set aside as to the decrees embraced in the present appeal, and a rehearing granted. The cause, on that rehearing, has now been heard at the present term upon the whole record, as amended and perfected.

From that it now appears that on February 17, 1877, the master filed his report of the sale, and the purchasers their petition for its confirmation and for other relief, and it was on that day, on motion of the complainants' solicitors, ordered that the report and sale be confirmed, unless objections thereto should be filed on or before the Friday next following, for which day it was held for hearing. And exceptions having been in the meantime filed by one Slaughter, on February 26, 1877, the court overruled the exceptions, and as the order reads, "does in all things confirm the sale" to the purchasers. From this decree an appeal was prayed by Slaughter, but was not perfected or prosecuted. The petition of the purchasers, filed February 17, 1877, in which they also asked for the immediate discharge and payment of their bid, had been referred to the master, whose report subsequently filed was confirmed by the decretal order of April 12, 1877, by which he was directed, on the surrender to him of two thousand three hundred and twenty-eight first mortgage Illinois Division bonds of the defendant railroad company, to execute and deliver to the purchasers a deed of the property sold, and thereupon the receiver was directed to let them into possession. On April 16, 1877, the master having reported the execution of the decree of April 12 by the delivery of the deed and the acceptance of the bonds, a further decree was entered approving and confirming the same. These are the two decrees first named in the prayer for the present appeal.

It is now contended by the appellees that these decrees are merely orders in execution of the previous decrees of the court; are, therefore, not final in the sense necessary to authorize an appeal; and that consequently, as to them, the present appeal must be dismissed for want of jurisdiction.

But, according to the rule sanctioned and adopted in *Forgay v. Conrad*, 6 How., 201, and *Blossom v. Railroad Company*, 1 Wall., 657, an appeal will lie from such decrees, according to the nature of their subject-matter and the rights of the parties affected.



In the present case the decree of April 12, 1877, in effect, distributes the proceeds of the sale upon the basis of the finding and declaration in the decree for foreclosure, that the principal of the bonds had become overdue; for it authorized the purchasers, to the extent of the proportion in which the bid, if treated as cash, would, when applied, extinguish the bonds held by them, to use their bonds as cash in payment of their bid. It is manifest that a substantial error, to the prejudice of one of the parties, may originate in a decree of foreclosure; and no question can be successfully raised against the right to appeal from such a decree. We cannot, therefore, dismiss the present appeal upon the ground alleged.

It is then urged by the appellees that the decrees in question, having simply followed the directions of previous decrees, originated no error, and that the only alternative is to affirm them. But the decrees involved in this appeal now under consideration are dependent upon the decree of foreclosure and sale; and the latter having been reversed, the decrees in question are left without support, and fall of themselves, by reason of that reversal, vitiated by the common error. As they are already annulled by operation of law, the subject-matter of the appeal is withdrawn, and the appeal itself must be dismissed for lack of anything on which it can operate.

The other decree involved in this appeal was entered November 19, 1877, and is a personal judgment in favor of Huidekoper, Shannon, and Denison, as trustees for themselves and other bondholders, for the deficiency arising from the excess of the amount found due by the decree of foreclosure and sale over the credit given of the proceeds of the sale of the mortgaged property. This deficiency is ascertained to be \$1,823,578.84, and execution is awarded therefor, against the railroad company, in favor of the above-named parties.

It would seem that the reasons given for dismissing the appeal as to the other decrees apply with equal force to the one now under consideration; and such, we think, would be the rule in ordinary cases; for the existence and amount of the deficiency must usually be dependent on the findings of the decree of foreclosure and sale, as to the amount due, and the extent to which that may have been reduced by the proceeds of the sale. But the present judgment is not in the customary form. Instead of finding the amount due to the complainants in whose behalf the sale was decreed, the judgment is rendered in favor of Huidekoper, Shannon and Denison, as trus-

tees for the bondholders. They claim not to have been parties to the suit at the time the decree of foreclosure and sale was rendered; and as we do not consider it proper to investigate or pass upon that claim in the present proceeding, we entertain the appeal, as to the deficiency decree, and reverse it, for the error which required the reversal to the decree of foreclosure and sale.

The argument of the present appeal, on both sides, seems to have been influenced by the consideration, that it possibly involved a present adjudication of the effect its determination might have upon the rights of the purchasers at the sale and the present title of the property sold. But no question of that character is involved. Whether the purchasers were parties to the litigation, either by name upon the record or in interest and by representation, so as to be affected by the error in the proceeding for which the decrees have been reversed, or whether they or their assigns are protected by the principle and policy that uphold the titles of bona fide purchase without notice, at judicial sales, and any other that may be mooted touching the point, are questions which do not arise upon the present appeal, and are left for further consideration in case they should be presented in a subsequent stage of this or by virtue of proceedings in some other suit.

For the reasons announced, it is, therefore, ordered that the appeal from the decrees of April 12, 1877, and of April 16, respectively, be dismissed, upon the ground that the decrees were vacated by the reversal of the prior decree of foreclosure and sale, rendered December 5, 1876, and that the decree entered November 19, 1877, in favor of Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison, trustees, be reversed, and that the cause be remanded with directions to proceed therein as may be just and equitable.

The appellants are entitled to their costs on this appeal.

THIS court has decided that a refusal to enter an *exonereter* on a bail bond, that judgments awarding or refusing to award or setting aside writs of restitution in actions of ejectment, that a judgment on a writ of error *coram nobis*, that a judgment refusing a writ of *venditioni exponas*, that a refusal to quash an execution or to quash a forthcoming bond, were not final judgments to which a writ of error would lie.—(13 How., 212; 9 Pet., 4; 5 Wall., 190; 2 Wall., 56; 7 Pet., 144; 6 Pet., 648; 14 Pet., 1; 20 How., 555; 16 Pet., 303. See, also, 8 Mees. & W., 515.)—*United States v. Frerichs*, S. C. U. S. (Oct. Term, 1882.)



## Newspaper Libel.

## MINER V. POST &amp; TRIBUNE CO.

*Michigan Supreme Court. October 31, 1882.*

1. In an action for newspaper libel the judge instructed the jury that a portion of the article complained of was privileged, but permitted them to consider it with the rest in deciding from the general spirit of the article whether that part which was left to their consideration, was malicious. *Held, error.*
2. It is matter of privilege to call public attention to the act of a judicial officer in ordering a person into confinement without a charge against him, or in requiring bail in an amount which, considering the prisoner's probable means, and position in life, he is unable to pay; these are violations of the most important guaranties of constitutional freedom, and are matters of public concern.

COOLEY, J.

The plaintiff is, and was in June, 1881, police justice of the city of Detroit. The defendant is publisher of a daily newspaper in that city. June 23, 1881, defendant published in its paper, concerning the plaintiff, the following article:

"*More of Miner.* A few days since a complaint was made before Justice Miner against a Chinaman. Without the assent of the complainant, Miner inserted the name of a second Chinaman, against whom no complaint was made, and whom no one charged with being connected with the offense.

"At the examination afterwards held, Miner admitted that he inserted the second name on his own motion, and though the evidence of the complainant completely exonerated the second man, and it was shown that he was not present at the commission of the alleged offense, Miner bound him over for trial under heavy bonds. Judge Swift, on the facts coming to his knowledge, released the second man.

"There is no accounting for Miner's action. In this case it was an inexcusable outrage. If he would enforce the law upon the multitude of offenders brought before him, if he would discharge his duty on the complaints for violating the liquor laws and gambling laws, people would be more lenient in their judgment of him. But he does not and apparently will not. Instead of that he turns upon a helpless Chinaman, who has no political influence to sustain him, and much prejudice to combat. It was a contemptible act and a cowardly act. And instead of satisfying the people who are demanding that he shall enforce the laws, it will excite their disgust and invite them to ask why it is that Justice Miner prosecutes and oppresses the weak and permits the strong to go unwhipped of justice."

For this publication suit was brought by

plaintiff in the Superior Court of Detroit. The defendant justified the publication as true.

When the case went to trial the defendant contended that the article related to matters of public interest and importance, and was for that reason privileged. The judge of the Superior Court seems to have assented to this view, so far as the part of the article relating to the liquor law and the law against gambling was concerned, and he ruled that that portion of the article must not be considered by the jury as a ground for recovery. As to the part which relates to the two Chinamen a different conclusion was announced. "That," he said, "is a specific charge. It accuses the plaintiff of direct moral malfeasance, so to speak; accused him of a direct act of oppression and a direct outrage; accused him of an act nearly amounting to a crime. It does not purport to be a report of the trial. It in no sense purports to give the proceedings of it; but it gives such conclusions as are drawn by whoever made the report, either from hearing the trial or from information given. Under these circumstances it appears to me that the defendant stands upon a very different basis from an accusation based upon a report. A general expression of an opinion, that in a certain direction a public officer does not do his duty, is undoubtedly privileged. Comments made upon a report would be privileged, provided the report itself justified those comments. My impression is that there is no report here. There is the opinion of whoever wrote the article, gleaned either from what he heard or what he saw. That is all there is of it. If it was a report, and from the report the paper had come to the conclusion that Miner had acted improperly, I think the paper would have been privileged in saying so. But instead of making a report, there is simply an assertion that the result of everything was in substance that Justice Miner had been guilty of what every person must acknowledge to be a very great outrage, to wit, oppressing a person because he was poor and obscure, a Chinaman, one who had no influence or friends. That imputes specific moral delinquency." Under this ruling the parties respectively put in their proofs to support and disprove the justification.

Very strangely, as it seems to me, when the case went to the jury the judge permitted that portion of the charge which he had ruled was privileged, and which he had altogether excluded from the jury as a ground of action, to be made the subject of comment to the prejudice of defendant. "It is privileged," he said, "and therefore not libelous.

I think the general spirit of the article may be commented upon, but only with that view; not that the matter of gambling and liquor laws can in any way be the subject of damages, but the tone of the article generally—I don't see how I can exclude that. Here is an article which, if you will observe it, says, 'there is no accounting for Miner's action in this case. It was an inexcusable outrage. If he would enforce the law upon the multitude of offenders brought before him; if he would discharge his duties in the complaints for violating the liquor laws or gambling laws, people would be more lenient in their judgments of him. But he does not, and apparently will not. Instead of that he turns upon a helpless Chinaman,' etc. You see the two are connected together." The general tone, then, of the article—the part privileged as well as the part not privileged—was held to be proper subject of comment and consideration, and the jury were left at liberty to take it into account in making up their verdict. But this in effect referred to them the spirit of the article for their judgment upon it, and that was equivalent to submitting to them the question whether, in the part privileged as well as in the remainder, they discovered anything indicative of malice. If the parties had been left to put, in their evidence as to the truth of the whole article, the submission to the jury of the question of actual malice, as broadly as it was submitted, would have been logical and perhaps necessary; but as the law assumes the absence of malice in privileged publications a ruling which allows the general tone of such a publication to be judged by the jury, in effect says to them, "though the law says there is no malice here, you are at liberty to find the contrary."

It is perfectly reasonable to assume that counsel, under this ruling, commented freely on the whole article, and that the jury, if that part of the article which related to the liquor and gambling laws seemed to them in bad spirit, did not discriminate very nicely between the charge as a substantive ground of action, and the charge as evidence in its general tone of a bad state of mind and feeling. Indeed it seems to me more than likely that the verdict they returned was really based on this part of the publication. The judge instructed them in substance that if what related to the two Chinamen was shown to be true, defendant was entitled to their verdict; and the record made it very plain that if this charge had been regarded there would have been no recovery. The conclusion seems irresistible that the jury gave damages for malice in that part of the article to which

the judge had ruled that malice was not to be imputed. This error renders a new trial imperative, but it is not, in my opinion, the sole or the principal error in the case. A much more serious and more dangerous error is found in that part of the article which concerned the proceedings in the case of the Chinaman.

On the general subject of privilege of the press I have recently had occasion to express my views with some fullness, and I shall not repeat them here. A brief reference to the facts and to certain general principles will be sufficient for the present purpose. When a judge orders a man into confinement without a charge against him he deprives him of liberty without due process of law; and in doing so violates the earliest and most important guaranty of constitutional freedom. When in a case where bail is of right he demands security in a sum which, considering the position in life and probable means and ability to give it, of the person accused, is altogether beyond his power, the demand is unreasonable, and for that reason is repugnant to a further provision of the Constitution, the importance of which is only second to the other. There must be some great and most serious defect in the administration of the law when such things can take place, and the matter is one which concerns every member of the political community; for if constitutional principles fail to protect the most humble of the people, they protect no one.

The defendant contends that to call public attention to what so vitally concerns the public is matter of privilege, and that, by presumption of law, its motives in doing so must be deemed proper and not actuated by malice. The trial judge denied this claim altogether. In doing so he put the case upon precisely the same footing with publications which involve merely private gossip and scandal. The truth was allowed to be a defense, if made out, and so it would have been if the injurious charge which was published had been one in which the public was not concerned.

If there is no difference in moral equality between the publication of mere personal abuse and the discussion of matters of grave public concern, then this judgment may be right and should be affirmed. But it is very certain, I think, that no declaration of this or any other court can convince the common reason that the distinction is not plain and palpable. Few wrongs can be greater than the public detraction which has only abuse, or the profit from abuse, for its object. Few duties can be plainer than to challenge public attention to official disregard of the principles which protect pub-

lic and personal liberty. I know of nothing more likely to encourage the license of a dissolute press than to establish the principle that the discussion of matters of general concern involving public wrongs and the publication of personal scandal come under the same condemnation in the law; for this inevitably brings the law itself into contempt and creates public sentiment against its enforcement. If a law is to be efficiently enforced the approval of the people must attend its penalties and there must be some presumption at least that an act which it punishes involves some elements of wrong doing. If *prima facie* the punishment is as likely to be inflicted for a right act as for a wrong act, the violation of law will not only be without disgrace, but the reckless libeler, when ranked by the law in the same company with respectable and public-spirited journalists, will shield himself to some extent behind their commendable public spirit and will find some protection for his license in the public opinion which condemns the law which it cannot respect.

The judgment, I think, should be set aside and a new trial ordered.

GRAVES, C. J., and MARSTON, J., concurred.

CAMPBELL, J., dissenting:

The libel in this case was to the effect that plaintiff, as police justice, without evidence or complaint, and without any cause, committed a Chinaman on a charge of an infamous felony and required heavy bail, and that his act was inexcusable. It was further criticised severely as an act of oppression, and he was more indirectly charged with failing to enforce the law on real criminals while he turned upon the helpless Chinaman who had no influence and was the subject of popular prejudice. The plea was one of justification, with the general issue. The court below confined the attention of the jury to the specific charge concerning the treatment of the Chinaman, disregarding the more general charges, and held the defense to be made out by showing the substantial truth of the facts stated, and that if these were substantially true the criticisms and inferences would also be fully justified. They were also directed to confine damages to actual damages in case they were satisfied the publication was made in good faith on reasonable grounds of belief. As the damages were found at \$250 there is no reason to suppose they transgressed this ruling, and they must have found the facts not substantially true.

The only question strongly contested was, whether the publication of libelous facts not substantially true, but made in good faith, is

so absolutely privileged as to exempt from civil liability the party libeled. The question of criminal responsibility does not arise. No authority appears, and it is difficult, in my judgment, to conceive how any rule can be justified which would allow an account of legal proceedings not substantially accurate to be published to any one's prejudice without some responsibility. No one doubts, and the court below does not dispute, the amplest right to draw inferences from facts, but when the facts themselves are wanting there can be no complete justification. The line is clearly drawn between false assertions and false deductions. Character is as sacred as property, and every one is entitled to its protection under the law as a fundamental legal right. Such has been, as I conceive, the unquestioned doctrine at all times, and it is the only doctrine under which the reputation of citizens can be preserved from assaults. Good faith diminishes the injury, and in many cases may reduce the damages to a minimum, but it is impossible to hold that it entirely destroys the damages, and in civil cases such is not the accepted law.

As we cannot on this record say that there was not evidence for the jury to pass on, I think the verdict should be sustained. The question was one of fact.

## Land Department.

Furnished by D. K. SICKELS.

### SEARS' PLACER.

[NOTE.—The mining laws require publication of notice of application for patent for a period of sixty days. The Department first held that to cover this period ten publications were required in a weekly newspaper, in the case of *McMurdy v. Streeter and McCunniff*, April 30, 1874, (*Sickels' Mining Decisions*, 324.) In that case an adverse claim was filed, and the question of the period of publication was an important element. In the case just decided the publication was made for nine weeks under the practice in force prior to the *Streeter* decision and protestant failed to file an adverse claim.]

*Held*, That as it is not shown that injury has been done to the rights of others by the irregularity in publication, and as the error was one of the Government and not of the applicant, the proceedings will not be declared void.

DEPARTMENT OF THE INTERIOR,

WASHINGTON, Jan. 11, 1883.

*The Commissioner of the General Land Office:*

SIR: I return herewith the papers submitted by your letter of 28th January, 1882, under my predecessor's direction of 11th of that month in the matter of the protest of Theodore H. Becker et al. against the allowance of

patent upon the placer claim of J. P. Sears, Central City, Survey No. 302, Ohio and Grass Valley Mining District, Clear Creek County, Colorado.

The application of Sears for patent was filed in 1873, and was, after contest in the courts as to a portion, and in the district office under your order as to other portions, finally allowed, subject to a claim set up by Becker to the effect that a known lode called the Soda Lode existed within the placer, which had been regularly located and belonged to said Becker.

Other matters appeared in the affidavits submitted by Becker asking the hearing; his own affidavit, however, being limited to an assertion of his right to said Soda vein, and a general suggestion of possible ownership in other parties, not named, to certain houses, grounds, &c., not specially described.

In filing these affidavits the attorney of Becker suggested to your office the fact that the original application of Sears was not published for the full period of sixty days according to a decision of this Department rendered in a similar case. Becker did not rely upon or set up this alleged fact, but stated under oath that his only reason for failure to file an adverse claim against the original application pending its publication was a misapprehension with regard to the inclusion of said Soda Lode within the placer claim.

These affidavits were filed in June and July, 1880, and on the 13th of August your office ordered the hearing asked, limiting the inquiry specifically to the matters connected with the allegation of the claimant Becker as to the existence and location of the Soda Lode, requiring it to be defined by an accurate survey, &c.

On the 30th of April previously, while the application was pending *ex parte*, and before any suggestion of right to Becker, your predecessor had waived all objection to the alleged insufficient publication, and directed the district officers to notify Sears to come forward and complete his entry within thirty days, subject to a declaration of abandonment in case of default.

I do not find any protest or objection to the limitations fixed by the order for hearing, nor any attempt to obtain an enlarging order, and the parties accepted notice and went to trial upon the issues defined by your office.

The record was completed on the case thus made up, and the decision of the district officers was in favor of Becker. One of the conditions of the order was to the effect that if Sears should abandon the Soda Lode ground no hearing should be had, but his right to a

patent for the residue should be admitted. After hearing and before action on his appeal from the decision of the district officers, Sears filed notice of such relinquishment. This of course closed the case; Becker having no appeal pending, and his rights in the controversy being limited to the issues involved at the outset. Having obtained these, there was nothing for you to decide, and the only proceeding was the issuing of the proper instructions for carrying the settlement into effect.

This you proceeded to do by the letter of November 21, 1881, the conclusions of which are now objected to ostensibly in the name of Becker, together with several other parties who have since the hearing filed affidavits setting up the existence of still other lodes within the placer, but not asserting that the same were known prior to the application of Sears for patent.

These you decline to recognize; and also decline further to consider the matters set up prior to the hearing, adjudicated, as you conclude, by the action of your predecessor, and no longer factors in the case.

There are certain irregularities apparent in these preliminary proceedings which you do not assume to pass upon, deeming them already settled; or, at least, not liable to attack by a stranger to them at their date; and it is the exercise of your discretion in this regard that I am asked to direct by supervisory action under Rules 83, 84 of Practice.

Recognizing the difficulties disclosed by the whole record, and in view of what has been done; considering the time that has elapsed since the filing of the application in 1878, and that every opportunity has been presented to show any injury to others by such irregularity as appears, and also of the fact that error was committed in the matter of the publication it was the error of the Government and not of the applicant, the register being designated by law as the person who shall publish the notice, I do not feel called upon to declare the whole proceeding void, unless it be shown that interests and rights then vested in third persons absolutely demand for their protection the avoidance of the same.

This I do not find. I accordingly decline to set aside your instructions, simply calling your attention to an alleged mistake in the survey defining the relinquished Soda Lode, and directing its proper examination in connection with the usual examination of the final surveys and papers, which should of course be made to conform to the accepted rulings and practice.

Very respectfully,  
H. M. TELLER, *Secretary*.

E. C. FORD, Attorney for Sears.

PAGE & HAUKE, Attorneys for protestants.

## The Courts.

### U. S. Supreme Court Proceedings.

The following gentlemen were admitted to practice during the past week :

John F. Schlosser, of Fishkill, N. J.; Addison E. Harris, of Indianapolis, Ind.; Benjamin H. Canby, of East St. Louis, Ills.; Wm. F. Webb and George T. Harrison, of Cincinnati, Ohio; O. N. Denny, of Portland, Oregon; Edward S. Bragg, of Fond du lac, Wis.; Oren S. Knapp, of Boston, Mass.; Lewis C. Rockwell, of Denver, Col.; John Cosgrove.

JAN. 19, 1883.

No. 662. The Connecticut Mut. Life Ins. Co. v. Ann C. Cushman et al. C. C. U. S., N. D. of Ill. Submitted under 20th rule.

No. 909. The township of Urbana v. Matthew M. Bolles. C. C. U. S., S. D. of Ill. Same.

No. 910. The Township of Urbana v. The Aetha Life Ins. Co. C. C. U. S., S. D. of Ill. Same.

No. 913. The Township of St. Joseph v. John M. Quackenbush. Same. Same.

No. 911. The Township of Urbana v. The First Nat. Bank of Danville. Same. Same.

No. 949. The Wiggins Ferry Co. v. The City of East St. Louis. Supreme Ct. of Ill. Same.

No. 1008. The Town of Pana v. James B. Bowler et al. C. C. U. S., S. D. of Ill. Same.

No. 1042. The County of Madison v. Thompson M. Warren. Same. Same.

No. 1057. The Escanaba and Lake Michigan Transportation Co. v. The City of Chicago. Same. Same.

No. 1043. The City of Quincy v. Mary Cook, executrix, etc. Same. Same.

No. 1146. The County of Kaukaee v. The Aetna Life Insurance Co. Same. Same.

No. 1150. The Union Trust Co. of New York v. John Walker. Same. Same.

No. 1151. The Union Trust Co. of New York v. Edward Fitzgerald. Same. Same.

No. 1152. The Union Trust Co. of New York v. E. E. Souther & Bro. Same. Same.

No. 1153. The County of Richmond, Ills., v. George W. Ballou & Co. Same. Same.

No. 153. Howard Stebbins v. Maria L. Duncan et al. Same. Argued and submitted.

JAN. 22, 1883.

No. 142. Reuben Hoffheins v. C. Russell & Co. et al. From C. C. U. S., N. D. of Ohio. Decree dismissing bill affirmed. Opinion by Mr. Justice Blatchford.

No. 119. The Sun Mutual Ins. Co. v. The Ocean Ins. Co. From C. C. U. S., S. D. N. Y. Decree reversed and cause remanded. Opinion by Mr. Justice Matthews. Dissenting, Chief-Justice Waite and Justices Miller and Bradley.

No. 1134. Andrew Albright et al. v. Andrew Teas. From C. C. U. S., D. of N. J. Decree affirmed. Opinion by Mr. Justice Wood.

No. 7. The United States v. R. G. Harris et al. On certificate of division in opinion between the judges of the C. C. U. S., W. D. of Tenn. Answered in the negative by Mr. Justice Wood. Dissenting, Mr. Justice Harlan.

Nos. 75 and 76. The Town of Thompson v. Orlando Perrine. Two cases to C. C. U. S., S. D. of N. Y. Judgment affirmed. Opinion by Mr. Justice Harlan.

The City of Detroit v. Thomas Dean et al.

From C. C. U. S., E. D. of Mich. Decree reversed and cause remanded. Opinion by Mr. Justice Field.

No. 128. Augustin J. Ambler v. Charles P. Chouteau et al. From C. C. U. S., E. D. of Mo. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1159. E. A. Clark, tax collector, &c., v. John Y. Keith. To the S. C., State of Tenn. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1086. Albert Grant v. The Phoenix Mutual Life Ins. Co. From S. C. D. of C. Motion to recall mandate denied.

No. 155. The Green Bay and Minn. R. R. Co. v. The Union Steamboat Co. C. C. U. S., W. D. of Wis. Argued and submitted.

JAN. 23, 1883.

No. 276. Angelo Hillman v. The United States. To C. C. U. S., S. D. of N. Y. Judgment reversed and cause remanded on motion.

Nos. 936 and 937. Algernon S. Badger, collector, &c., v. Patrick H. Pepper. Two cases. To C. C. U. S., E. D. of Louisiana. On motion dismissed.

No. 156. J. R. Metsker et al. v. G. H. Bonebrake, assignee, etc. C. C. U. S., D. of Ind. Argued and submitted.

No. 157. The U. S., Intervenor, v. James H. Wilson, receiver, etc. C. C. U. S., M. D. of Tenn. Argued and submitted.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

Present, CARTTER, C. J., and Justices COX and JAMES.

JAN. 20, 1883.

Edwin M. Lewis, trustee, etc., v. Harvey Kennedy et al. Decree of Special Term ratified and confirmed, except one-fifth of the claimant's claim. Appeals prayed by both parties and bonds fixed by the court.

James H. Forsyth et al. v. James Fullerton et al. Decree affirming report of auditor and dissolving the injunction, &c.

Same v. Same. Motion for a rehearing.

Lavinia Young v. Manhattan Life Ins. Co. of New York. Verdict of Special Term set aside and cause remanded for new trial.

U. S. v. Hugh Strider. Motion for new trial overruled.

Caroline Nelson v. Charles E. Henry et al. Decree reversed and bill of complainant dismissed. Same v. Same. Motion for leave to reargue this cause before a full bench.

Mary J. Flannagan et al. v. John Snow et al. Appeal dismissed.

U. S. v. Hugh Strider. Judgment of Criminal Term affirmed. Adjourned *sine die*.

#### EQUITY COURT.—Justice Hagner.

JAN. 17, 1883.

Dugan v. Ward. Commission ordered to issue. Central Nat. Bank v. Nume. Reference to auditor.

Webster v. Coltman. Exception to answer overruled.

Quill v. Looney. Petition granted in part and denied in part.

Barret v. Bank of the Republic. Decree ordered to be prepared.

Kendick v. Kendick. Testimony ordered taken.  
Boteler v. Langley. Conveyance ordered.  
Beneficial Endowment Ass. v. Boyle. Distribution of fund ordered.

Parker v. Parker. Decree vesting title passed.  
JAN. 18, 1883.

Gersdorff v. Gersdorff. Appearance of absent defendant ordered.

Knight v. B. & P. R. R. Co. Injunction pending hearing of cause granted.

Johnston v. Dist. of Col. Injunction dissolved and bill dismissed.

JAN. 19, 1883.

Westham Granite Co. v. Chandler. Leave granted to amend bill.

Ourand v. Ourand. Appearance of absent defendant ordered.

Hickey v. Kipler. Decree pro confesso against certain defendants ordered.

O'Day v. O'Day. Conveyance validated.

JAN. 20, 1883.

Barrett v. Nat. Bank Republic. Payment of deposit decreed.

Shelton v. Ware. Auditor's report ratified.

Moore v. Joeger. Complainant allowed time to answer petition.

Langley v. Terry. Sale ratified nisi and cause referred to auditor.

Galt v. Gleason. Stone allowed to become party to bill.

Anderson v. Howgate. Sale ratified finally and cause referred to auditor.

Hurley v. Hurley. Sale ordered and trustee appointed to sell.

#### CIRCUIT COURT.—Justice Mac Arthur.

JAN. 22, 1883.

Carey v. Roberts. Judgment for plaintiff.  
Bank v. Bigelow. Judgment set aside and leave to plead.

Cox v. Riley. Motion to set aside judgment and leave to plead granted.

JAN. 23, 1883.

Drury v. Inland, &c. Judgment of justice of the peace affirmed.

Bell v. King. Same.

Noland v. Dye. Appeal dismissed.

Gunnell v. Revells. Suit dismissed.

Carter v. W. & G. R. R. Co. Same.

Barbour & Hamilton v. Brown. Judgment by default.

Pierce v. Miller. Verdict for plaintiff for \$44.  
Hesseo & Co. v. Barker. Leave to withdraw motion.

Ford & Bro. v. Brennan. Dismissed.

Nelson et al. v. Day. Same.

#### CRIMINAL COURT.—Justice Wylie.

JAN. 8, 1883.

United States v. Brady et al.

A request was made by the jury to be supplied with a printed copy of the proceedings, which was denied. One of the jurors being sick, the court adjourned.

JAN. 9, 1883.

James A. Gooch, Mr. Laird, J. W. Walker and Mr. Sleeman were examined and testified. Where an endorsement on a jacket showed that a petition had accompanied the letter contained therein, the court held that the endorsement was not sufficient to require the production of the petition.

JAN. 10, 1883.

Geo. W. Sweeny, Mr. Brewer, and Mr. Nephi Johnson were examined. Objection was made to the introduction of papers, on the ground that it had not been shown that all the papers were not in the jacket when the endorsement was made on the jacket. Objection overruled and papers admitted.

JAN. 11, 1883.

Mr. Nephi Johnson was examined. Wm. D. Johnson testified as to changes made in a petition, and Mr. Sweeny was called to identify papers.

JAN. 12, 1883.

S. W. De Busk, Mr. Burgner, of Colo., and Mr. Sleeman, testified for the prosecution.

JAN. 13, 1883.

U. S. v. Hackman & Reed. Indictment for libel. Demurrer overruled.

U. S. v. Jas. E. Shea. Indictment for sending obscene letters through the mail. Demurrer sustained and indictment dismissed.

U. S. v. Edward Edgeley. Indictment for house-breaking. Pleaded guilty. Sentenced.

#### PROBATE COURT.—Justice Hagner.

JAN. 12, 1883.

In re Belva A. Lockwood, guardian to orphans of John M. Heck. Citation directed to Martha Heck. Granted.

Estate of Henry Nissen. Final account of executor approved and passed.

JAN. 13, 1883.

Will of Jenny Sullivan filed for probate.

Will of Mary T. Johnson. Letters of administration granted and administrators bonded.

Estate of Charles Perry. Executor bonded and qualified.

Archie B. Dennis. Guardian bonded.

Estate of James F. Meguire. Petition and order of administration granted.

Estate of Ambrose E. Burnside. Receipt of distributees filed.

JAN. 15, 1883.

Will of Ernest Bickas proved.

Estate of — Colby. Petition and order of administration granted.

JAN. 16, 1883.

Estate of David McNamary. Exceptions to account of executrix filed.

Will of Elvera B. Brandon filed.

JAN. 17, 1883.

Estate of Thos. Shailer. Inventory of personal estate, &c., filed.

JAN. 19, 1883.

Will of Susanna C. Birch filed.

In re Clark Mills. Caveat of Clark Mills, jr.

In re Archie B. Dennis. Order allowing guardian to send beyond D. C.

Estate of Geo. C. Hammeker. Claim of administratrix filed.

Will of H. Morse. Letters testamentary ordered and will proved.

Estate of Jas. P. Meguire. Petition of creditor for letters of administration. Publication ordered.

Estate of Wm. J. Dyer. Petition and order of letters of administration granted; and bonded.

Estate of Jas. M. Lyon. Order to dismiss caveat nisi.

Estate of Jas. H. Causten. Order of publication against absent administrator.

Estate of Wm. D. Crandell. Petition for letters of administration and renunciation of widow.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JAN. 20, 1883.  
 24183. Thos. E. Waggaman v. W. Scott Smith. Appeal.  
 Defts attys. Worthington & Heald.  
 24184. Charles A. Walter v. Lucy Carter. Appeal. Defts  
 atty, O. C. Cole.  
 24185. Walter B. Wilcox v. Charles T. Smith. Appeal.  
 Defts atty, P. B. Stilson.

JAN. 22, 1883.  
 24186. Paul Leary v. Matthew Meade. Appeal. Defts  
 atty, H. B. Moulton.  
 24187. George W. Utermohle v. Alexander R. Williams,  
 jr. Appeal. Defts atty, Thos. F. Miller.  
 24188. Ohas. Brown v. George W. Knox et al. Appeal.  
 Defts attys, Ross & Dean.  
 24189. Eliza Berryman v. P. B. Dunn. Appeal. Defts  
 attys, H. O. & E. Claughton.  
 24190. M. J. Paillard & Co. v. Frederick W. Helbig et al.  
 Account, \$233.66. Piffs atty, A. O. Bradley.  
 24191. Dearing & Johnson v. Thomas D. Lewis. Due bill  
 and account, \$666.78. Piffs atty, W. P. Bell.

JAN. 23, 1883.  
 24192. James D. Drury v. The Inland and Seaboard  
 Coasting Co. Appeal.  
 24193. Catharine A. Wyndham v. Thaddeus Buchanan.  
 Appeal. Defts atty, A. K. Browne.  
 24194. George W. Utermohle v. Jacob Weiner. Appeal.  
 Defts atty, E. B. Hay.  
 24195. Susie Bell v. Herman J. King. Appeal. Piffs  
 atty, J. F. McNally.  
 24196. The Trustees of the Corcoran Gallery of Art v. John  
 T. Brewster. Account, rent, \$1,034.16. Piffs atty, O. M.  
 Matthews.  
 24197. Edward Frier v. Edward E. Newton. Certiorari.  
 Defts attys, Ross & Dean.  
 24198. Jonas Saenger v. Bernard Silverberg. Account,  
 \$216.96. Piffs atty, H. W. Garnett.  
 24199. L. A. Strobel & Co. v. Bernard Silverberg. Acc't.,  
 \$144.45. Piffs atty, H. W. Garnett.  
 24200. Dickson & King v. John W. P. Myers. Note and  
 account, \$119. Piffs atty, O. M. Matthews.  
 24201. J. E. Straus & Co. v. Edward A. Saunders. Acc't.,  
 \$141.34. Piffs attys, Ross & Dean.  
 JAN. 25, 1883.  
 24202. Aaron S. Caywood v. Emma O'Prey. Appeal.  
 Defts atty, H. T. Taggart.

### IN EQUITY.—New Suits.

JAN. 19, 1883.  
 8492. Rogers Sullivan v. Ellen Carrioco et al. To vacate  
 deed. Com. sol., Darlington and Elliot.  
 JAN. 20, 1883.  
 8493. Eva F. Shomo v. Oscar O. Shomo. For divorce.  
 Com. sol., H. B. Moulton.  
 JAN. 22, 1883.  
 8494. Jos. W. Corcoran v. George B. Coburn et al. Com.  
 sol., C. M. Matthews.  
 8495. Susan A. Crisemon v. Lewis E. Crisemon. For  
 divorce. Com. sol., U. S. Bundy.  
 8496. Reuben Carroll v. Walter Roberts. To set aside  
 patent. Com. sol., D. S. Walker.  
 JAN. 23, 1883.  
 8497. Mary L. Hamersly v. David Hamersly. For  
 divorce. Com. sol., B. A. Lockwood. Defts sol., W. T.  
 Johnson.

### Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
 Columbia, holding a Special Term for Orphans' Court  
 Business. January 19, 1883.  
 In the matter of the Estate of William V. Crandall, late  
 of the District of Columbia, deceased.  
 Application for Letters of Administration on the estate  
 of the said deceased has this day been made by Parley H.  
 Eaton, of the District of Columbia.  
 All persons interested are hereby notified to appear in  
 this court on Friday, the 9th day of February next,  
 at 11 o'clock a. m., to show cause why Letters of Ad-  
 ministration on the estate of the said deceased should  
 not issue as prayed: Provided, a copy of this order be  
 published once a week for three weeks in the Washington  
 Law Reporter previous to the said day.  
 By the Court. A. B. HAGNER, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 A. K. BROWN, Solicitor. 4-3

### Legal Notices.

**THIS IS TO GIVE NOTICE,**  
 That the subscriber, of the District of Columbia, hath  
 obtained from the Supreme Court of the District of Colum-  
 bia, holding a Special Term for Orphans' Court business,  
 Letters of Administration on the personal estate of William  
 I. Dyer, late of the District of Columbia, deceased.  
 All persons having claims against the said deceased are  
 hereby warned to exhibit the same, with the vouchers there-  
 of, to the subscriber, on or before the 19th day of January  
 next; they may otherwise by law be excluded from all  
 benefit of the said estate.  
 Given under my hand this 19th day of January, 1883.  
 JOSEPH E. DYER, Administrator.  
 F. W. JONES, Solicitor. 4-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
 Columbia, holding a Special Term for Orphans' Court  
 Business. January 19, 1883.  
 In the matter of the Estate of James F. Meguire, late of  
 the District of Columbia, deceased.  
 Application for Letters of Administration on the estate  
 of the said deceased has this day been made by Lewis S.  
 Wells, of the District of Columbia.  
 All persons interested are hereby notified to appear in  
 this court on Friday, the 9th day of February next, at 11  
 o'clock a. m., to show cause why Letters of Administration  
 on the estate of the said deceased, should not issue as prayed.  
 Provided, a copy of this order be published once a week for  
 three weeks in the Washington Law Reporter previous to  
 the said day.  
 By the Court. A. B. HAGNER, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 HINE & THOMAS, Solicitors. 4-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
 Columbia.  
 In re Estate of James H. Causten, deceased.  
 This cause coming on to be heard on the application of  
 Mary Emma Carvallo, for the removal of James H. C.  
 Young, Administrator, de bonis non of the estate of James  
 H. Causten, deceased, it is, this 19th day of January, A. D.  
 1883, ordered, that said James H. C. Young, show cause  
 why he should not be removed as such Administrator on or  
 before the second day of February, A. D. 1883. Provided,  
 a copy of this notice be published once a week for two  
 weeks in the Washington Law Reporter before the said 2d  
 day of February, 1883.  
 A true copy. A. B. HAGNER, Asso. Justice.  
 Test: 4-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
 Columbia, the 19th day of January, 1883.  
 CATHARINE OURAND } No. 8428. Equity Docket, 23.  
 v. }  
 GEORGE E. OURAND ET AL.  
 On motion of the plaintiff, by Messrs. Appleby & Edmon-  
 ton, her solicitors, it is ordered that the defendant, John  
 M. Riggs, cause his appearance to be entered herein on or  
 before the first rule-day occurring forty days after this day:  
 otherwise the cause will be proceeded with as in case of  
 default.  
 By the Court. A. B. HAGNER, Asso. Justice.  
 A true copy. Test: 4-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**  
 That the subscriber of the District of Columbia, hath  
 obtained from the Supreme Court of the District of Colum-  
 bia, holding a Special Term for Orphans' Court business,  
 Letters Testamentary on the personal estate of Charles  
 Perry, late of the District of Columbia, deceased.  
 All persons having claims against the said deceased are  
 hereby warned to exhibit the same, with the vouchers  
 thereof, to the subscriber, on or before the 18th day of  
 January next; they may otherwise by law be excluded  
 from all benefit of the said estate.  
 Given under my hand this 15th day of January, 1883.  
 4-3 WALTER S. PERRY, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
 Columbia, the 3d day of January, 1883.  
 MINNIE S. WILLEY } No. 8,366. Eq. Doc. 23.  
 v. }  
 CHARLES F. WILLEY.  
 On motion of the plaintiff, by Mr. J. G. Bigelow, her  
 solicitor, it is ordered that the defendant, Charles F. Willey,  
 cause his appearance to be entered herein on or before the  
 first rule-day occurring forty days after this day: otherwise  
 the cause will be proceeded with as in case of default.  
 By the Court. A. B. HAGNER, Justice.  
 A true copy. Test: 1-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca T. Tompkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1883.

JOHN BECK, Administrator. 4-3  
W. W. BOARMAN, Solicitor.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles H. Morse, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1883.

LAURA A. MORSE. 4-3  
GEO. F. APFLEBY, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Gebhard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1883.

GEORGE GEBHARD, Administrator. 4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of January, 1883.**

LOREN M. SAUNDERS } No. 8,430. Equity Docket, 22.  
v.

SAYLES J. BOWEN ET AL. }  
On motion of the plaintiff, by Mr. Daniel O'C. Callaghan, his solicitor, it is ordered that the defendants, George R. Herick, trustee, and Augusta V. Pfeiffer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. A. B. HAGNER, Justice.  
True copy. Test: 4-3 E. J. Maigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary A. Pearce, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.

WM. H. PEAROE, Administrator. 4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES A. LANGLEY } No. 8,303. In Equity.  
v.

ELIZA FREERY ET AL. }  
On motion of the solicitor for plaintiff, it is, ordered by the court this 20th day of January, 1883, that the sale made by the trustee in this case of the real estate in the proceedings mentioned, known as part of lots 11 and 12, in Davidson's sub-division of square No. 216, in the city of Washington, and by said trustee reported to this court, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 20th day of February, 1883. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said 20th day of February, 1883.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 4-3 E. J. Maigs, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ANNIE M. SHOEMAKER ET AL. } No. 8124. In Equity.  
v.

AGNES CAMPBELL ET AL. }  
Francis Miller and R. Ross Perry, the trustees herein, having reported the sale of the property mentioned and described in the bill of complaint to the Metropolitan Railroad Company, at and for the sum of \$2,700, and the compliance of said company with the terms of sale:

It is, this 12th day of January, 1883, by the court, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of February, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three (3), successive weeks before said 13th day of February, 1883.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 4-3 E. J. Maigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

VIRGINIA TAYLOR } 8,238. Eq. Dec. 22.  
vs.  
H. A. TAYLOR ET AL. }

Upon coming in of the trustee's report made herein this day, relating to the sale of a certain pew, and upon motion of the trustee herein, it is, by the court, this 18th day of January, A. D. 1883, ordered, adjudged and decreed, that the sale of said pew to James M. Johnston as reported by the trustee be and the same is hereby in all things confirmed unless cause to the contrary be shown on or before the 18th day of February, A. D. 1883. Provided, also that a copy of this order be published in the Washington Law Reporter for three successive weeks before the last named day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 4-3 E. J. Maigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann M. Green, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1882.

WILLIAM W. WISHART, 601 F street. n. w. 1-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 10th day of January, 1883.**

FRANK B. SMITH } No. 8,410. Equity Docket.  
v.

SUSAN BURCH ET AL. }  
On motion of the plaintiffs, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Frank Horne, Laura M. Horne, John Francis Horne, Mary L. Horne, William J. Horne and Frances Ellen Horne, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True Copy. 2-3 Test: E. J. Maigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, January 9, 1883.**

MARGARET L. RAMSEY } No. 7,902 Eq. Dec. 21.  
v.

ELEANOR LEIB ET AL. }  
Susannah Orandell and William H. Wetzel, the trustees in the above entitled cause, having reported to the court that they have sold parts of lots 127 and 128, in Beatty and Hawkins' addition to Georgetown, fronting on High street near Second street to John Archer, who has assigned his purchase to William H. Brewer, at and for the price and sum of thirteen hundred and eighty dollars (\$1,380), and that the said purchaser has complied with terms of sale as prescribed by the decree:

It is, by the court this 9th day of January, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed and the trustees are hereby directed to make a deed of said property to said purchaser, unless cause to the contrary be shown on or before the 9th day of February, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 9th day of February, 1883.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 2-3 E. J. Maigs, Clerk.



*Legal Notice.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. January 6, 1883.

In the matter of the Estate of Egbert Thompson, dec'd.  
Application for Letters of Administration on the estate  
of Egbert Thompson, late Captain U. S. Navy, has this  
day been made by Emily B. Thompson, of Washington  
City.

All persons interested are hereby notified to appear in  
this Court on Friday, the 2d day of February next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of said deceased, should not issue as prayed.  
Provided, a copy of this order be published once a week  
for three weeks in the Washington Law Reporter previous  
to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
FAIRN & LADD, Attorneys. 2-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 9th day of January, 1883.

CHRISTIAN A. FLEETWOOD

J. MALCOLM HAWKESWORTH, } No. 8,415. Eq. Doc. 22.  
SURVIVING TRUSTEE ET AL. }

On motion of the plaintiff, by Mr. Jas. H. Smith, his  
solicitor, it is ordered that the defendant, J. Malcolm Haw-  
keworth, surviving trustee, cause his appearance to be  
entered herein on or before the first rule-day occurring  
forty days after this day: otherwise the cause will be  
proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

ELIZABETH A. MOORE ET AL. } No. 6,192. Eq. Doc. 18.  
MARY E. HARRISON ET AL. }

James G. Payne and Edward H. Thomas, trustees, hav-  
ing reported the sale of lot six [6], of the subdivision of part  
of square numbered four hundred and fifty-eight [458],  
made and recorded by the heirs of William Whetcroft,  
deceased, to Peter Lattener, for the sum of ten thousand  
eight hundred [10,800], dollars, and the sale of the east  
half of the west half of lot eight [8]. In square numbered  
five hundred and sixteen [516], fronting 16 feet on "1"  
street, by the depth of said lot to Robert Herman, for the  
sum of thirty-seven and one half [37½] cents per square  
foot:

It is, by the court this 9th day of January, A. D. 1883,  
ordered, that said sales be ratified and confirmed unless  
cause to the contrary be shown on or before the 9th day of  
February next. Provided, a copy of this order be published  
in the Washington Law Reporter once a week for each of  
three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

GEORGE W. SNOUFFER ET AL. } No. 7,400. In Equity.  
FELIX GREENAPPLE ET AL. }

Upon consideration of the report of the trustee filed  
herein on January 4, 1883:

It is, this 10th day of January, A. D. 1883, ordered, that  
the sale made by them and therein reported be finally  
ratified and confirmed on February 10, 1883, unless cause  
be shown on or before that day. Provided, a copy hereof  
be inserted in the Washington Law Reporter once a week  
for three weeks prior to that day.

The report states that lot 102, of King's subdivision in  
square 492, was sold to Isaac Wenger, for \$1,360

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JAMES CORNELIUS ET AL. } No. 7,919. Eq. Doc. 21.  
JOHN DE VAUGHN ET AL. }

Upon consideration it is by the court this 2d day of  
January, 1883, ordered that the sale heretofore made and  
reported by Woodbury Wheeler and Edward H. Thomas,  
trustees of lot twenty-two (22), in said trustee's subdivision  
of square seven hundred and ninety-nine (799), at and for  
the sum of three hundred (300), dollars to John F. Donohoe,  
be ratified and confirmed unless cause to the contrary be  
shown on or before the 2d day of February next. Pro-  
vided, a copy of this order be published once a week for  
each of three successive weeks prior to said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 2-3 R. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

ALBERT BURNEY BIBB } No. 7,750. Equity.  
LUCY HUNTER ET AL. }

John W. Pilling, trustee, having reported that he has  
sold the east part of lot one hundred (100), in Threlkeld's  
addition to the city of Georgetown, with the improvements  
thereon, to Albert Burney Bibb, for the sum of eight  
hundred (\$500), dollars:

It is, this 2nd day of January, A. D. 1883, ordered, that  
said sale be ratified and confirmed unless cause to the con-  
trary be shown on or before the 5th day of February, A. D.  
1883. Provided, a copy of this order be published once a  
week for three successive weeks before said day in the  
Washington Law Reporter.

By the Court. A. B. HAGNER, Asso. Justice.  
True copy. Test: 3-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

H. W. BURCH ET AL. } No. 8,293. Eq. Doc. 22.  
JOHN E. BURCH ET AL. }

Henry C. Coburn, the trustee appointed by the decree of  
this court in this cause to sell the real estate in the pro-  
ceedings mentioned having reported to the court an offer  
from Joseph Forrest, of nine hundred dollars [\$900], for  
the west half of lot No. 8, in square 328, one of the pieces of  
property mentioned in the first report of said trustee filed  
in this cause on December 28, 1882, as having been duly  
offered for sale at public auction and withdrawn because  
no bid thereon was received:

It is, on this 18th day of January, 1883, ordered, that the  
said offer of the said Forrest be and the same is hereby  
accepted, and it is further ordered and decreed that the sale  
of said property to the said Forrest be and the same is  
hereby ratified and confirmed unless cause to the contrary  
be shown on or before the 18th day of February, A. D. 1883.  
Provided, a copy of this order be published in the Wash-  
ington Law Reporter once a week for three weeks before  
the said 18th day of February, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 3-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of January, 1883.

JESSE LEE ADAMS ET AL. } No. 8,408. Eq. Doc. 22.  
JAMES L. ADAMS ET AL. }

On motion of the plaintiffs by Mr. B. T. Hanley,  
their solicitor, it is ordered that the defendants, James  
L. Adams, Walter G. Adams and Norval W. Adams,  
cause their appearance to be entered herein on or before the  
first rule-day occurring forty days after this day; other-  
wise the cause will be proceeded with as in case of default

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 3-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. January 12, 1883.

In the case of Richard T. Morsell, Administrator of  
Charley L. Farr, deceased, the Administrator aforesaid has,  
with the approval of the court, appointed Friday, the 9th  
day of February A. D. 1883, at 11 o'clock a. m. for making  
payment and distribution under the court's direction and  
control; when and where all creditors and persons entitled  
to distributive shares (or legacies) or a residue, are hereby  
notified to attend in person or by agent or attorney duly au-  
thorized, with their claims against the estate properly  
vouched; otherwise the Administrator will take the benefit  
of the law against them. Provided, a copy of this order be  
published once a week for three weeks in the Washington  
Law Reporter previous to the said day.

Test: 3-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 18th day of January, 1883.

CHARLES GERSDORFF } No. 8,431. Equity Docket 22.  
MARIA GERSDORFF }

On motion of the plaintiff, by Mr. Leon Tobriner, his  
solicitor, it is ordered that the defendant, cause her ap-  
pearance to be entered herein on or before the first rule-  
day occurring forty days after this day; otherwise the cause  
will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. 3-3 Test: R. J. MEIGS, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - February 3, 1888

GEORGE B. CORKHILL - - - EDITOR

**Contempt in the United States Courts as a Crime. Arrest of Offender in one District and Removal to Another for Trial.**

The opinion of Judge McCrary, of the United States Circuit Court for the Eastern District of Missouri, in the application of Ellerbe for the writ of habeas corpus, reported in the *Criminal Law Magazine* for January, 1888, classifies contempt of court under the head of crimes and considers the mode of proceeding under the provisions of the Revised Statutes of the United States to obtain the apprehension in the jurisdiction of one court of the United States of an offender against the laws of the United States in another, and his removal to the jurisdiction of the court having cognizance of the offence.

The petitioner was a resident of St. Louis within the eastern district of Missouri, and while temporarily within the eastern district of Arkansas was served with a subpoena as a witness in a cause which stood for trial in the Circuit Court of the United States for the latter district. He failed to respond. The court ordered his arrest for contempt, and the clerk issued a warrant, which warrant was taken to the eastern district of Missouri, and there presented to the judge of the district court, who endorsed upon it an order to the marshal of that district to arrest the petitioner and deliver him to the marshal for the Arkansas district. The arrest having been made the petitioner applied to the court of the Missouri district in which he had been apprehended for his discharge upon habeas corpus, claiming that he was restrained of his liberty without justification or proper authority.

After reciting the facts and the provisions of Sections 725 and 1014, R. S. U. S., the opinion proceeds:

"It is conceded by the counsel for the petitioner that the statute authorizes the arrest in one district of a party charged with the commission of an offense against the United

States in another district. But it is contended that contempt is not such an offense. This position, however, is untenable. A refusal to obey the process of a court of the United States is an attempt to obstruct the administration of justice, and is plainly an offense against the federal Government.

"A proceeding in contempt in a federal court is a criminal case, to be prosecuted in the name of the United States. *Riggs v. Supervisors*, 1 Woolw., (U. S.), 377; *Ex-parte Kearney*, 7 Wheat., (U. S.), 38; *New Orleans v. Steamship Co.*, 20 Wall., (U. S.), 387.

By the express terms of section 725 of the Revised Statutes of the United States, the courts of the United States are authorized to punish contempt, and this necessarily implies that it is an offense against the United States. It has frequently been held to be an offense against the United States, within the terms of the provision of the Constitution which authorizes the President to pardon such offenders, *Dixon's Case*, 3 Op. Atty. Gen., 622; *Conger's Case*, 4 Op. Atty. Gen., 317; *Rowan & Well's Case*, id., 458.

"It is next insisted on behalf of the petitioner that he is entitled to a hearing before he can be sent out of the district, and that he has not had such a hearing as the law requires. It was, no doubt, the duty of the marshal of the eastern district of Arkansas to apply to the judge of his district for an order for the arrest of the petitioner; and it was the duty of the district judge to enter into such such an investigation as was necessary to enable him to determine whether the petitioner should be sent out of the district to answer the charge against him. Precisely how far the district judge was authorized to go upon such a hearing it is not necessary in the present case to determine. Certain it is that he had a right to inquire into the question of the prisoner's identity. This would be necessary in any case, for the judgment of a court in another district, however conclusive upon all other questions, would establish nothing with regard to the identity of the prisoner.

"It may, for the purposes of this case, be assumed that the district judge could inquire into the question of the jurisdiction of the court in Arkansas to try the prisoner for the offence charged. If such be the law the jurisdiction clearly appears. I do not think, however, that in a case such as this the district judge can go further and inquire into the question of the guilt or innocence of the prisoner. There may be cases in which the inquiry might properly extend to an examination into the question of probable guilt, but if so, they are cases where there has neither

been a preliminary examination, nor an indictment, in the district where the offence was committed, nor an order for the arrest of the prisoner by a court of the United States of competent jurisdiction and sitting in that district. See opinions of Mr. Justice Miller and Judge Love, 1 Woolw. (U. S.), 422.

The power to punish for contempt is inherent in every court, and, as we have already seen, is expressly conferred upon the Federal courts by act of Congress. The record before us shows that the circuit court of the United States in and for the eastern district of Arkansas, having jurisdiction of the petitioner, ordered his arrest to answer for a contempt of its authority. That court is the sole judge of such a question, and it would be exceedingly improper for another court to assume to revise its judgment upon the subject. Even the Supreme Court of the United States, upon appeal, will not review the action of a circuit court of the United States in imposing a fine for contempt. *New Orleans v. Steamship Co., supra.*

"If the district court had, in the present case, gone so far as to question the propriety of the order for the petitioner's arrest, on the ground that he was not guilty of a contempt of the authority of the circuit court of the United States for the eastern district of Arkansas, its action would have been unwarranted in law and disrespectful to another court of co-ordinate jurisdiction. The proof, therefore, which was before the District court sufficiently established all the facts that were necessary to justify the decision of that court against the petitioner. It showed that the petitioner was within the jurisdiction of the circuit court of the United States in and for the eastern district of Arkansas, that he was served with subpoena to appear before the court as a witness in a civil cause therein pending, and that he failed to respond to the subpoena, and removed himself beyond the jurisdiction of the court.

"If persons summoned to appear as witnesses in the federal courts can refuse to obey the summons, and place themselves beyond the reach of the law by departing from the district, the most serious consequences would result; the administration of justice would be greatly impeded, the rights of parties in many cases would be sacrificed, and the courts of the United States would be rendered powerless to protect litigants by compelling the attendance of important witnesses.

"The conclusion is that the judgment of the district court should be affirmed. And it is accordingly ordered."

## Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKET.

AUGUST HERRING

v.

THE DISTRICT OF COLUMBIA.

At Law. No. 19,911.

{ Decided November 18, 1882.  
The CHIEF JUSTICE and Justices COX  
and JAMES sitting.

1. Where in an action to recover damages for injuries to property, the statute of limitations is pleaded, recovery can only be had for such injuries as were incurred during the period not covered by the statute.
2. The admission of evidence as to injuries suffered, without regard to the period covered by the statute is error, but will be cured by an instruction afterwards given the jury that the plaintiff cannot recover for such injuries as were inflicted prior to three years before the bringing of suit, provided the evidence given is such that the jury can divide the injuries inflicted within the three years from that which was incurred prior thereto, but it will be otherwise when the evidence is not of such a character.
3. Damages resulting to private property from the defective constitution of a sewer by the District affords no ground of action unless it is shown that the District was guilty of carelessness either in the selection of the engineer or in the selection of a plan.

### STATEMENT OF THE CASE.

#### Motion for a new trial on exceptions.

This was an action to recover damages of the District for injuries to plaintiff's property; the declaration, which was filed April 2, 1880, set forth that plaintiff was the owner of certain lots of ground in the city of Washington on part of which was erected plaintiff's dwelling house; that prior to the committing of the grievances complained of, the said house was safe, strong and dry in every part and a comfortable and healthful residence for plaintiff and his family: that the said lots were free from stagnant water. That there was a natural stream of running water flowing through the lots and emptying into Tiber Creek. That the defendant caused the grade of the street fronting upon plaintiff's property to be raised and thereafter constructed a sewer along said street and above the level of plaintiff's lots; that the defendant attempted to divert the water of the said natural stream from its ancient channel into said sewer, but had so unskillfully and negligently made said sewer of such small size at its point of connection with said stream that ever since the year 1873 and up

to the time of bringing this suit, the said sewer had failed on many occasions to carry off all the water of said stream so that it continued to run down and along the course of its ancient bed. That after the making of the sewer the defendant then filled up a street, crossing this stream, in so negligent and careless a manner as to choke and stop up the bed thereof so that the water escaping from the sewer as well as other large quantities of water accumulated from the rainfall, was unable to find an outlet or way of escape and was consequently forced back upon and over plaintiff's lots and into his house to the depth of several feet, remaining there for more than two months, and that since said time water had lain in greater or less quantities upon and adjacent to the plaintiff's property, forming stagnant and ill smelling pools from which noxious vapors have constantly arisen. In consequence of which, plaintiff's family had greatly suffered in health, and eventually causing the death of his wife in March, 1879. That owing to the said flooding of his house a portion of it had become uninhabitable and the walls greatly weakened and injured and that his lots of ground had become almost wholly valueless, &c.

To the declaration, pleas of not guilty and that the action did not accrue within three years were interposed. Issue being joined plaintiff's counsel at the trial, in course of making his proof, asked plaintiff, who was testifying in his own behalf, the following question:

"What has been the injury done to your house?"

To which question defendant's counsel objected unless the answer of the witness was confined to the injury done the property within three years prior to the institution of the suit. Plaintiff's counsel objecting to this modification the court overruled defendant's objection and permitted the witness to answer, whereupon he detailed the nature of the injuries and ended by saying that the loss of the use of his basement was worth five dollars a month and the damage done to the house he would estimate at \$1,000 at least; that his lots which were used for garden purposes he could not use after they began to be flooded. Plaintiff also gave testimony as to the existence of two springs in the west side of plaintiff's ground and that the effect of the raising of the grade of the streets was to dam up the water from the springs on that square, and sometimes flood the square, and that the water seemed to have settled on the ground and formed a kind of marsh, that there was water then standing about his house about six

inches deep; that there was a creek or natural stream about eight or ten feet wide that ran near the plaintiff's property.

The testimony being closed counsel for defendant requested the court to instruct the jury as follows:

"The plaintiff cannot recover for any damages that were caused prior to the second day of April, 1877, [and the measure of damages for injury to his property will be the difference between its value at that time, and its value at the time of the commencement of this suit.]"

But the court refused to grant the part included in brackets although allowing that portion of the prayer which referred to the statute of limitations.

The following prayers of the defendant were also refused:

"The jury cannot find a verdict for the plaintiff for damages resulting to him from any defect in the plan of sewerage adopted by the District; unless they should believe from the evidence in the case that the District had negligently selected incompetent engineers to devise such plan."

"Under the pleadings in this cause, the plaintiff cannot recover damages for any injury done his premises on account of the water flowing from the springs mentioned in the testimony given in the trial hereof."

The jury then rendered a verdict in favor of plaintiff for \$2,006, which was afterwards reduced by *remittitur* to \$1,200.

To the ruling of the court in permitting the questions objected to to be answered and to its refusal to give the instructions prayed, the defendant reserved his exceptions.

BIRNEY & BIRNEY for plaintiff:

1. The plaintiff's counsel asked: *What has been the injury done to your house?* Question excepted to, because not confined to the three years before suit. We answer:

The court charged the jury that plaintiff could not recover damages except for the three years before suit. Defendant was therefore not injured by the answer to the question "what has been the injury done to your house?"

The question in its form covered the injury to the time of asking. It was the defendant's right, under its plea of the statute of limitations, to cross-examine with a view to excluding all injuries barred by the statute.

2. Defendant asked the court to charge that the measure of damages for injury to plaintiff's property would be the difference between its value at the time of the injury and its value at the date of the suit.

Answer. If the defendant had added the words: "*Caused by the wrongful acts of defend-*

ant,' the charge asked for would have been less objectionable; but it would still have required the substitution of the idea of *diminution* for that of *difference*. The latter may be an increase. Suppose that extraneous causes—neighborhood improvements or the like—had given a large additional value to the property, could plaintiff recover that? Suppose those causes had restored the property to its original value, would defendant be exempt from liability for damage actually caused by it? The charge as asked for was imperfect and inaccurate.

8. The fourth exception assumes that plaintiff claims damages for some defect "*in the plan of sewerage adopted by the District.*"

The assumption is unwarranted. It is true that, if defendant had not pleaded the statute of limitations, plaintiff would have offered evidence under the declaration of the *insufficient size* of the sewer mouth and of great damage to plaintiff therefrom in 1873-4-5-6. No such evidence was offered.

All the evidence was under the chief averments in the *second* and *third* paragraphs of the declaration. It related *directly* to the damming up of the natural stream and consequent flooding of plaintiff's house and lots; and *incidentally* to the three sources of the water which should have found its outlet by the natural stream.

This evidence had all been given without objection made by defendant's counsel.

While plaintiff's counsel kept carefully to proving the averments in the declaration and showing what water could not run off by the natural outlet, defendant's counsel were desirous of giving to the case the character of an attack on the *plan of sewerage*.

The instruction was irrelevant. No testimony was offered by defendant to justify its damming up the stream and backing up the water so as to flood plaintiff's lots. If defendant had proved that it had submitted to a competent engineer this question of damming up that stream, it might have made the point that an engineer's advice justified it in wilfully destroying plaintiff's property. One court (see *Van Pelt v. Davenport*, 42 Iowa, 308), has held that if a city has committed to a competent engineer the decision as to the size of a culvert intended to take off *surface waters*, it is not liable for his mistakes; but no court will probably ever go so far as to hold that a municipality may relieve itself from responsibility for damming up a natural stream and flooding private property by showing it had the counsel of an engineer to commit the trespass. 3 Kent Com., 439, 440; 2 Washb. R. P. 64, pl. 40; *Rose v. St. Charles*,

49 Mo., 509; 55 Mo., 119; 66 N. Y., 62, 88; 65 N. Y., 341; *Stetson v. Faxon*, 19 Pick., 147, 158, 510; *Indianapolis v. Lawzer*, 38 Ind., 348; *Perry v. Worcester*, 6 Gray, 544; *Gardner v. Newburgh*, 2 Johns. Ch., 162; *Kellogg v. Thompson*, 66 N. Y., 88; 2 Dillon on Mun. Corp., 1038; *Pixley v. Clark*, 35 N. Y., 520.

"The backing of water so as to overflow the lands of an individual, . . . if done under statutes authorizing it for the public benefit, is such a taking as by the constitutional provision demands compensation." *Pumpelly v. Green Bay Co.*, 15 Wallace, 166; *Wood on Nuisances*, 121, 123, 131, 133, 331; 30 Vt., 610; 38 Vt., 350.

5. Defendant claims that, under the pleadings, no damages should be given for injuries by water flowing from the springs on square 616. Plaintiff avers the existence of "a *natural stream* of running water which flowed through plaintiff's said lot" on said square, and that defendant filled up the channel so that "all place of waste and escape for the water of said *natural stream*" . . . "was cut off and stopped."

It was not necessary for plaintiff to aver that a natural stream is made up of spring tributaries, as well as other waters, or to designate the precise locality of each spring. It was necessary for him to prove the existence of the natural stream; and the best way to do that, was to prove that it was fed by permanent springs.

FRANCIS MILLER argued the case for the District, but filed no brief.

Mr. Justice JAMES delivered the opinion of the court.

The plaintiff alleges that the District of Columbia had constructed a sewer and afterwards had made a dam across a stream of running water, so that in connection with the defective sewer it caused the overflow of the plaintiff's property. It appeared that this construction had been made some ten years before the suit had been brought and the statute of limitations was pleaded.

At the trial a witness was asked what injury was done the property. That question was objected to because it covered injuries done during the time excluded by the statute of limitations. This objection was overruled, and the witness answered that the house was injured to the extent of about one thousand dollars, and that he had lost the use and occupation of certain parts of his property, which were worth certain sums per month. The court afterwards instructed the jury that the recovery could only be had for injuries accruing within the last three years. That cured the error in

allowing testimony as to injuries before that time so far as the rents were concerned. The rent falling within the three years could easily be found by calculation. But the error of admitting proof that the house had been injured to the extent of about one thousand dollars, without showing when that injury accrued, and without showing any means of dividing the injury suffered within the last three years, from the injury suffered before, was not cured by this ineffectual instruction. On such testimony as that, it was impossible for the jury to find out the amount of injury suffered within the last three years, and to that extent the admission of the testimony furnished them a false basis; and manifestly misled them.

There is another reason why this judgment may not stand. The declaration charges that the injuries complained of arose partly from the defective construction of the sewer and partly from the dam which stopped a natural water-course. Therefore the verdict and the judgment were based upon two claims; one of which, namely, the defective construction of the sewer, is not a ground of action, unless it is shown that the District was guilty of *carelessness*, either in the selection of the engineer, or in the selection of a plan; and on this latter point no evidence whatever was offered.

The judgment is therefore reversed and the case remanded for a new trial with leave to the plaintiff to amend.

**PROMISSORY NOTE.—INDEFINITE PLACE OF PAYMENT.**—A note payable "at the Bank of Goshen" is not on its face payable at any particular bank, and does not stand upon the same footing as an inland bill of exchange. (43 Ind. 35, 46 id., 62, 68 id., 242.) There was evidence tending to show that there was evidence tending to show that the payee of the note, assisted by several others, had placed a lightning rod on defendant's barn, against his protest, and that the note was executed ostensibly for work done, but really to prevent the parties from putting a rod on his house, and of getting them to leave the premises. From these facts the jury might have inferred duress. *Butterfield v. Davenport*, Sup. Ct. of Ind. Dec., 1882.

OVER \$12,000,000 have been placed in the South during the past few years in establishing cotton mills. The average profit is eighteen per cent., while the Northern mills yield but seven per cent. profit.

THE world's production of iron is estimated at 20,000,000 tons annually.

## United States Supreme Court.

No. 94.—OCTOBER TERM, 1882.

**Measure of Damages in Intentional and Unintentional Trespass.**

THE E. E. BOLLES WOODEN WARE COMPANY,  
Plaintiff in Error,

vs.

THE UNITED STATES.

*In Error to the Circuit Court of the United States for the Eastern District of Wisconsin.*

In an action for timber cut and carried away from the land of plaintiff, the measure of damages is:

1. Where the defendant is a knowing and willful trespasser, the full value of the property at the time and place of demand; or, of suit brought, with no deduction for labor and expense of the defendant.
2. Where the defendant is an unintentional or mistaken trespasser, or his innocent vendee, the value at the time of conversion, less what the labor and expense of defendant and his vendor have aided to its value.
3. Where defendant is a purchaser without notice of wrong from a willful trespasser, the value at the time of such purchase.

Mr. Justice MILLER delivered the opinion of the Court.

This is a writ of error to the Circuit Court for the Eastern District of Wisconsin, founded on a certificate of division of opinion between the judges holding that court.

The facts, as certified, out of which this difference of opinion arose appear in an action in the nature of trover, brought by the United States for the value of two hundred and forty-two cords of ash timber, or wood suitable for manufacturing purposes, cut and removed from that part of the public lands known as the reservation of the Oneida tribe of Indians, in the State of Wisconsin. This timber was knowingly and wrongfully taken from the land by Indians, and carried by them some distance to the town of Depere, and there sold to the defendant, which was not chargeable with any intentional wrong or misconduct or bad faith in the purchase.

The timber on the ground, after it was felled, was worth twenty-five cents per cord, or \$60.71 for the whole, and, at the town of Depere, where the defendant bought and received it, three dollars and fifty cents per cord, or \$850 for the whole quantity. The question on which the judges divided was whether the liability of the defendant should be measured by the first or the last of these valuations.

It was the opinion of the circuit judge that the latter was the proper rule of damages, and judgment was rendered against the defendant for that sum.

We cannot follow counsel for the plaintiff in error through the examination of all the cases, both in England and this country, which his commendable research has enabled him to place upon the brief. In the English courts the decisions have in the main grown out of coal taken from the mine, and in such cases the principle seems to be established in those courts, that when suit is brought for the value of the coal so taken, and it has been the result of an honest mistake as to the ownership of the mine, and the taking was not a wilful trespass, the rule of damages is the value of the coal as it was in the mine before it was disturbed, and not its value when dug out and delivered at the mouth of the mine. (*Martin v. Porter*, 5 Meeson & Welsby, 351; *Morgan v. Powell*, 3 Adolphus & Ellis, N. S., 218; *Wood v. Morewood*, 3 Adolphus & Ellis, 440; *Hilton v. Woods*, L. R., 4 Equity, 438; *Jegon v. Vivian*, L. R., 6 Chancery, 760.)

The doctrine of the English courts on this subject is probably as well stated by Lord Hatherley in the House of Lords, in the case of *Livingston v. Rawyards Coal Company*, Law Reports, 5 Appeal Cases, 33, as anywhere else. He said: "There is no doubt that if a man furtively, and in bad faith, robs his neighbor of his property, and because it is underground is probably for some little time not detected, the court of equity in this country will struggle, or I would rather say, will assert its authority to punish the fraud by fixing the person with the value of the whole of the property which he has so furtively taken, and making him no allowance in respect of what he has so done, as would have been justly made to him if the parties had been working by agreement." But "when once we arrive at the fact that an inadvertence has been the cause of the misfortune, then the simple course is to make every just allowance for outlay on the part of the person who has so acquired the property, and to give back to the owner, so far as is possible under the circumstances of the case, the full value of that which cannot be restored to him in specie."

There seems to us to be no doubt that in the case of a wilful trespass the rule as stated above is the law of damages both in England and in this country, though in some of the state courts the milder form has been applied even to this class of cases. Such are some that are cited from Wisconsin. (*Single v. Schnieder*, 24 Wis. R., 299; *Weymouth v. Railroad Co.*, 17 Wis., 550.)

On the other hand, the weight of authority in this country as well as in England favors the doctrine that where the trespass is the

result of inadvertence or mistake, and the wrong was not intentional, the value of the property when first taken must govern, or if the conversion sued for was after value had been added to it by the work of the defendant, he should be credited with this addition.

*Winchester v. Craig*, 33 Michigan R., 205, contains a full examination of the authorities on the point. (*Heard v. James*, 49 Mississippi, 236; *Baker v. Wheeler*, 8 Wendell, 505; *Baldwin v. Porter*, 12 Conn., 484.)

While these principles are sufficient to enable us to fix a measure of damages in both classes of torts where the original trespasser is defendant, there remains a third class where a purchaser from him is sued, as in this case, for the conversion of the property to his own use. In such case, if the first taker of the property were guilty of no willful wrong, the rule can in no case be more stringent against the defendant who purchased of him than against his vendor.

But the case before us is one where, by reason of the willful wrong of the party who committed the trespass, he was liable, under the rule we have supposed to be established, for the value of the timber at Depere the moment before he sold it, and the question to be decided is whether the defendant who purchased it then with no notice that the property belonged to the United States, and with no intention to do wrong, must respond by the same rule of damages as his vendor should if he had been sued.

It seems to us that he must. The timber at all stages of the conversion was the property of plaintiff. Its purchase by defendant did not divest the title or the right of possession. The recovery of any sum whatever is based upon that proposition. This right, at the moment preceding the purchase by defendant at Depere, was perfect, with no right in any one to set up a claim for work and labor bestowed on it by the wrongdoer. It is also plain that by purchase from the wrongdoer defendant did not acquire any better title to the property than his vendor had. It is not a case where an innocent purchaser can defend himself under that plea. If it were, he would be liable to no damages at all, and no recovery could be had. On the contrary, it is a case to which the doctrine of *caveat emptor* applies, and hence the right of recovery in plaintiff.

On what ground then can it be maintained that the right to recover against him should not be just what it was against his vendor the moment before he interfered and acquired possession? If the case were one which concerned additional value placed upon the prop-



erty by the work or labor of the defendant after he had purchased, the same rule might be applied as in case of the inadvertent trespasser.

But here he has added nothing to its value. He acquired possession of property of the United States at Depere, which, at that place, and in its then condition, is worth \$850, and he wants to satisfy the claim of the Government by the payment of \$60. He founds his right to do this, not on the ground that anything he has added to the property has increased its value by the amount of the difference between these two sums, but on the proposition that in purchasing the property, he purchased of the wrongdoer a right to deduct what the labor of the later had added to its value.

If, as in the case of an unintentional trespasser, such right existed, of course defendant would have bought it and stood in his shoes; but, as in the present case, of an intentional trespasser, who had no such right to sell, the defendant could purchase none.

Such is the distinction taken in the Roman law as stated in the Institutes of Justinian, Lib. II., Title I., section 34.

After speaking of a painting by one man on the tablet of another, and holding it to be absurd that the work of an Appellee or Parrhasius should go without compensation to the owner of a worthless tablet, if the painter had possession fairly, he says, as translated by Dr. Cooper: "But if he, or any other, shall have taken away the tablet feloniously, it is evident the owner may prosecute by action of theft."

The case of *Nesbitt v. St. Paul Lumber Co.*, 21 Minn. B., 491, is directly in point here. The Supreme Court of Minnesota says: "The defendant claims that because they (the logs) were enhanced in value by the labor of the original wrongdoer in cutting them, and the expense of transporting them to Anoka, the plaintiff is not entitled to recover the enhanced value, that is, that he is not entitled to recover the full value at the time and place of conversion." That was a case, like this, where the defendant was the innocent purchaser of the logs from the willful wrongdoer, and where, as in this case, the transportation of them to a market was the largest item in their value at the time of conversion by defendant; but the court overruled the proposition and affirmed a judgment for the value at Anoka, the place of sale.

To establish any other principle in such a case as this would be very disastrous to the interest of the public in the immense forest lands of the Government. It has long been

a matter of complaint that the depredations upon these lands are rapidly destroying the finest forests in the world. Unlike the individual owner, who, by fencing and vigilant attention, can protect his valuable trees, the Government has no adequate defense against this great evil. Its liberality in allowing trees to be cut on its land for mining, agricultural and other specified uses, has been used to screen the lawless depredator who destroys and sells for profit.

To hold that when the Government finds its own property in hands but one remove from these willful trespassers, and asserts its right to such property by the slow processes of the law, the holder can set up a claim for the value which has been added to the property by the guilty party in the act of cutting down the trees and removing the timber, is to give encouragement and reward to the wrongdoer, by providing a safe market for what he has stolen and compensation for the labor he has been compelled to do to make his theft effectual and profitable.

We concur with the circuit judge in this case, and the judgment of the circuit court is affirmed.

NO. 140.—OCTOBER TERM, 1881.

LOT M. MORRILL, Collector, &c., Plaintiff in Error,

v.

JOHN WINSLOW JONES.

*In Error to the Circuit Court of the United States for the District of Maine.*

The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of carrying into effect what Congress has enacted.

Sec. 2506, R. S. U. S., relating to the importation of stock, includes animals of all classes, and the Secretary cannot confine its operation to "superior" stock. This is not the office of a Treasury regulation, and can only be accomplished by an amendment of the law.—ED. W. L. R.

Mr. Chief-Justice WAITE delivered the opinion of the court.

Section 2,505 of the Revised Statutes provides, among other things, that "Animals, alive, specially imported for breeding purposes from beyond the seas, shall be admitted free (of duty), upon proof thereof satisfactory to the Secretary of the Treasury, and under such regulations as he may present." Article 383 of the Treasury Customs Regulations provides that before a collector admits such animals free he must, among other things, "be satisfied that the animals are of superior stock, adapted to improving the breed in the United States."



Jones, the defendant in error, imported certain animals, which were entered at the port of Portland, Maine, and claimed that they should be admitted free, as they were "specially imported for breeding purposes." The collector, though the importation was for breeding purposes, demanded the duties because he was not satisfied the animals were of "superior stock." The duties were accordingly paid under protest and this suit was brought to recover back the amount so paid.

On the trial the court instructed the jury that, "under the statute, animals, whether of superior or inferior stock, if, in fact, imported specially for breeding purposes, are entitled to be admitted free of duty," and "that the law does not give to the Secretary of the Treasury power to prescribe in the regulations what classes of animals imported for breeding purposes shall be admitted free of duty." To this instruction an exception was taken. The jury returned a verdict against the collector, upon which judgment was rendered. To reverse that judgment this writ of error was brought. The only error assigned on the exceptions actually taken at the trial relates to the instruction as to the effect of the Treasury regulation.

The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted. In the present case we are entirely satisfied the regulation acted upon by the collector was in excess of the power of the Secretary. The statute clearly includes animals of all classes. The regulations seek to confine its operation to animals of "superior stock." This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe. Congress was willing to admit duty free all animals specially imported for breeding purposes; the Secretary thought this privilege should be confined to such animals as were adapted to the improvement of breeds already in the United States. In our opinion, the object of the Secretary could only be accomplished by an amendment of the law. That is not the office of a Treasury regulation.

It has been argued here, that as it appears from the testimony, which has been incorporated into the bill of exceptions, that the importation in this case was from Prince Edward's Island, it was not from "beyond the seas," and therefore that the judgment below was right. It is a sufficient answer to this objection that no such point was made below. The court was not asked to rule on any such question. Our examination is con-

fined to such exceptions as were taken to the rulings actually made on the trial and incorporated in some form into the record, "an authenticated transcript" of which is returned with our writ of error.

The judgment of the circuit court is affirmed.

#### **Fraudulent Endorsement on Check.**

THE CHATHAM NATIONAL BANK, Plaintiff,  
against OSCAR J. HOCKSTADTER, Defendant.

#### *New York Common Pleas. General Term.*

The defendant, as attorney at law in the collection of a claim held by A, received a check payable to A's order, which he sent to A, with a demand for ten per cent. for collecting the claim. A refused to pay, and defendant took away the check, which, after sending it to A again two or three times with a like demand and refusal, he indorsed in his client's name and deposited in plaintiff's bank.

*Held*, That defendant's act in indorsing the check as a pretended attorney in fact was unauthorized and fraudulent.

Appeal by plaintiff from a judgment of the General Term of the Marine Court affirming a judgment in favor of defendant dismissing the complaint upon the merits.

The facts, as averred in the complaint and proved on the trial, were as follows: Defendant Hochstadter, as attorney at law, received from James R. Hills, his check upon the Chemical National Bank for \$120, dated May 1, 1878, payable to the order of George W. Bruce. This check was given by Hills in payment of a claim held by Bruce against one Fairchild, an insolvent. The defendant Hochstadter received the check, as attorney at law, for Mr. Bruce in the collection of the claim, that is to say, he drew up a statement of the claim, procured Mr. Bruce's proof to it, sent it to Hills and got Hills' check to the order of Bruce. There was a dispute on the trial as to whether Bruce had employed him to act in this matter, but the complaint alleges that he was attorney at law for Bruce in receiving the check, and that fact is to be deemed established as far as this action is concerned.

Hockstadter claimed a commission of ten per cent. from Bruce for collecting the claim, and on receiving Hill's check as aforesaid sent it to Bruce with a demand for \$12. Bruce refused to pay and defendant took away the check.

It was sent to Bruce again with a similar demand two or three times and taken away by defendant each time, as Bruce refused to pay his bill.

Finally, after two weeks, defendant indorsed the check, "George W. Bruce, per

Oscar J. Hochstadter, Atty.," and deposited it with the plaintiff, the Chatham National Bank, to the credit of the account of "A. McFadden, per Oscar Hochstadter, Atty.," an account kept in said bank by defendant. The amount of the check was credited to that account and subsequently drawn out by defendant. The Chatham National Bank, in due course, collected the check from the Chemical National Bank, on which it was drawn by Hills, the maker. The Chemical Bank subsequently demanded back the amount of the check from the Chatham National Bank, on the ground of forged indorsement, and the latter having refused the amount to the Chemical Bank and having demanded it from defendant, brought this action on his refusal.

The complaint charged that the defendant made the indorsement to deceive and defraud the plaintiff, who relied on the representation that he was attorney in fact for Bruce, whereas he was not such attorney, nor authorized to indorse for Bruce.

The justice who tried the cause found that the defendant, as attorney at law, under the circumstances of the case, was authorized and had a right to indorse the check and deposit and receive the pay thereon; that he acted in good faith, and that plaintiff had no cause of action against the defendant, and certainly not one in fraud.

**J. F. DALY, J.**—An attorney at law employed to collect a claim, who receives in payment thereof a check payable to the order of his client, has no authority to indorse it in his client's name and cash it. The power to indorse checks and bills must be expressly conferred. (*Filly v. Gilman*, 34 Sup. Ct., 339.)

A power of attorney to collect moneys due and to compound, discharge and give releases therefor, does not authorize the attorney to indorse a bill drawn to the order of his principal. (*Hogg v. Smith*, 1 Taunton, 347; *Murray v. East India Co.*, 5 B. & Ald., 204.)

Nor does the power to receive a check in payment give the attorney the right to assign it or indorse it, if it be payable to the order of the principal. (*Holtzinger v. Nat. Com. Ex. Bank*, 6 Abb. N. S., 292; *Graham v. U. S. Savings Inst.*, 46 Mo., 186; *Millard v. Nat. Bank Republic*, 4 Wash. Law R., 209.) There is nothing in the authority of an attorney at law as such that confers power to indorse checks drawn to his client's order, which he has received in payment of claims placed in his hands for collection. On the contrary, nothing is better settled than that an attorney at law employed to collect a demand has not even authority to receive a check, bill or note

from the debtor in payment. How can any authority to indorse such an instrument be implied? And if special authority were conferred on him by his client to receive such an instrument, he would not be permitted, as the cases cited show, to indorse it in his client's name, if it were drawn to the order of latter. It was suggested in the court below that the attorney of a non-resident or absent client might risk the loss of the debt if he had to send the check abroad or wait the client's return. The sufficient answer is that the difficulty suggested need never arise; the attorney may always refuse to receive a check and may insist upon payment of the claim in money.

An objection to the recovery of the amount of the check in this action is made on the ground that the complaint alleges fraud on the part of the defendant in endorsing the check as attorney for George W. Bruce, and collecting it through his own bank; and it is claimed that the evidence shows that defendant indorsed the check in good faith, upon the supposition that he had the right to indorse his client's name. The bad faith and fraud of defendant are conclusively proved. As an attorney at law, he knew he had no right to indorse his client's name, not being thereto authorized by his client. Indorsing as "Att'y" he purposely omitted to state that it was attorney at law, but left it so in order to deceive the bank into the belief that he was attorney in fact for Bruce. His account was kept in the name of McFadden, from whom he had a power of attorney, and he knew that such a power was necessary to indorse checks, and that the presumption was that he indorsed the check as attorney in fact, just as he drew or indorsed for McFadden.

But the strongest evidence of his bad faith is that he did not attempt at first to indorse and draw this check, but sent it repeatedly to Mr. Bruce, and only after the latter had refused to pay his bill, resorted to the desperate step of indorsing it fraudulently as a pretended attorney in fact, and drawing the money.

The judgment must be reversed, with costs of this appeal and of the General Term of the Marine Court to plaintiff, and a new trial ordered, with costs of the former trial to plaintiff to abide event.

Filed January 12, 1883.

WHOEVER is fond of the golden medium, is serene, and exempted equally from the filth of an old mansion, and from the cares of an envious court.—*Horace*.

## Land Department.

Furnished by D. K. SICKELS.

### Mining Case.

#### BECKER v. SEARS.

Section 2333 U. S. Revised Statutes, carves out from a patent to a placer claim all known lodes found therein at date of application, together with twenty-five feet of surface ground on each side as an incident thereto.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, Jan. 22, 1883.

*The Commissioner of the General Land Office:*

SIR: On the 11th instant I dismissed the protest of Becker et al. v. J. P. Sears, respecting the issue of patent to the latter for his placer claim on Central City Mineral Entry No. 1790, Survey Lot No. 302, Grass Valley and Ohio Mining District, Colorado.

In so doing I directed your attention to an alleged mistake in the survey, with respect to the relinquished "Soda Lode" claimed by Becker, and instructed you to give it proper examination in passing upon the completeness of the final entry, before the issue of patent.

At the outset Becker claimed this Lode by virtue of an alleged location in 1861, defining it as twenty-five feet in width on each side of said vein or lode. By your order for hearing dated August 13, 1880, you acquired a certified copy of the location, and a diagram or plat showing the boundaries and extent, and its position relative to the survey of the placer claim.

Instead of fairly complying with this, Becker filed a copy of what purported to be a copy of said original location made June 4, 1861, and recorded September 22, 1873, calling for twenty-five feet surface ground on each side, together with an alleged relocation made September 16, 1880, more than thirty days after your order, claiming by new lines and enlarging the surface ground to seventy-five feet on each side, and filed a diagram of the relocation only, without showing the boundaries of the original claim.

The testimony of the deputy surveyor shows that he did not follow the original location, boundaries and monuments, but resurveyed the vein according to his own notions of what would be a proper location, and fixed no permanent monuments or bounds to his survey on the ground, but merely set two temporary stakes at the north end "to indicate the points for Mr. Becker to establish permanent monuments hereafter."

Sears objected to this attempted relocation, and demanded that the showing be confined

and responsive to the order made by your office in the case calling for the true limits of the claim originally located. After the hearing, and before your decision, he relinquished the Soda Lode claim, referring in his relinquishment to the survey No. 361, which number was given to the diagram filed by Becker, but which does not appear to have been approved by the surveyor-general as a survey of a claim. This number, however, appears to have properly belonged to the original survey made in 1873, filed as an adverse claim in the case of the Montague placer claim, with which the Soda Lode location conflicted, said survey being but fifty feet in width, and which the present diagram, as already shown, fails to show.

Sears claims that it was this proper original survey of the Soda Lode location which he intended to describe in his relinquishment; and you find upon the examination, that as the relocation was entirely illegal, the exclusion of twenty-five feet only on each side of the vein or lode can be insisted upon.

The attorneys for Becker ask, by letter of 17th instant, that your decision of the 13th instant to this effect be submitted to me for final determination; but instead of basing any claim upon the relinquishment, they take issue with all the antecedent adjudications, and flatly deny the right of Sears to any portion of the placer claim. On the 18th you submitted the papers accordingly.

On the 18th they also filed notice of their intention to ask for a review of my action of 11th instant dismissing the protest; and on the 20th, instead of filing such motion, they ask that the case be referred to the Attorney-General on certain interrogatories assumed by them to be vital, but which were held by me to lie beyond the necessity for consideration with reference to the case as it now stands.

The relinquishment was in terms made by the attorney for Sears October 21, 1881, "to the end that the applicant for patent may be no longer delayed in securing title." It has never been accepted by Becker, who has persisted in opposing the whole claim up to the present time, and now, in support of his suggestion for a correction, fails to adduce any argument in support of his understanding of the instrument, but, on the contrary, renews his efforts to obtain a reopening of the whole matter.

Appearing as a mere protestant, he has not, in my opinion, such standing as will entitle him to claim anything in the case, and cannot rely upon mere technicalities, nor can he insist upon the enforcement of a relinquishment offered upon such conditions even though it

clearly covered, as in my judgment it does not, the spurious and unauthorized survey and relocation. He is estopped by his own failure to observe them.

But the law, section 2333 Revised Statutes, clearly, in my opinion, carves out from a patent to a placer claim all known lodes found therein at date of application, together with twenty-five feet of surface ground on each side as an incident thereto. As this was a known lode, however insignificant in value, and was not claimed by Sears in the manner provided by law, and is now at his request excluded from his final plat of survey, it necessarily forms no part of his claim. The residue, under your decision, may properly be patented to him; and I decline further to consider the objections raised by the protestants in the case.

I forward herewith the papers in the case.

Very respectfully,

H. M. TELLER,  
Secretary.

**TESTAMENTARY CONTRACT.**—Where an instrument in its true character is only a will, but is not properly attested, the fact that it has not been recorded or repudiated in life cannot give it force after death. (75 Ind., 258; Jarman on Wills, 53, 34; Red. on Wills, 170.) M. and W. entered into a contract in writing attested by one witness, whereby M. agreed to provide for said W. as long as he should live and at his death was to have all the personal property of said W.; held to be an agreement upon an executory consideration, and being testamentary could not operate for want of sufficient attestation. *McCarty v. Waterman*. Sup. Ct. of Ind. (Dec., 1882.)

## The Courts.

### U. S. Supreme Court Proceedings.

The following gentlemen were admitted to practice during the past week:

George Walker, of New York; Morris M. Cobun, of Little Rock, Ark.; John F. Andrew, of Boston, Mass.; Lewis M. Hosea, of Cincinnati, Ohio; William Gilbert, of Syracuse, N. Y.; W. C. Cochran, of Cincinnati, Ohio; James P. Helm, of Louisville, Ky.; Franklin S. Richards, of Ogden, Utah; Charles W. Goodyear, of Buffalo, N. Y.; William H. Doolittle, of Washington, D. C.; Edward Taggart, of Grand Rapids, Mich.; Alfred Mills, of Morrisville, N. J.; Frank P. Prichard, of Phila., Penn.; Henry L. Nelson, of Boston, Mass.; P. M. Babcock, of Minneapolis, Minn.; Charles E. Hendrickson, of Mount Holly, N. J.; Pope Barrow, of Athens, Ga.; Aurelius Miner, of Salt Lake City, Utah; George B. Ely, of New York City.

JAN. 24, 1883.

No. 159. The United States v. The Steamer

Nuestra Senora de Regla, etc. D. C. U. S., S. D. of New York. Argued and submitted.

No. 160. The New York Guaranty and Indemnity Co. et al., v. The Memphis Water Co. et al. C. C. U. S., W. D. of Tenn. Argued and submitted.

No. 161. John C. Tinsley v. The Commonwealth of Virginia. S. C. of App. of Va. On motion dismissed pursuant to 16th rule.

No. 162. Moses Neal et al. v. The United States. C. of Cls. Argued and submitted.

JAN. 26, 1883.

No. 163. Joseph L. Hall v. Neal Macneale et al. C. C. U. S., S. D. Ohio. Argued and submitted.

No. 165. Joseph L. Hall v. Mosler, Bahman & Co. Same.

JAN. 29, 1883.

No. 148. Henry J. Rodgers v. Wm. F. Durant, impleaded, &c. From C. C. U. S., N. D. Ills. Decree reversed and cause remanded with directions to dismiss the bill.

No. 144. James H. Embry, adm'r, v. Wm. L. Palmer et al., adm'r, &c. To the Supreme Court of Errors of Conn. Decree reversed and cause remanded with instructions to dismiss the bill. Opinion by Mr. Justice Matthews.

No. 1185. The U. S., ex rel. Ward B. Burnett, v. Henry M. Teller, Secretary of the Interior. To Sup. Ct. D. of Col. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 1130. John Bush v. The Commonwealth of Ky. To Ct. of App. of Ky. Judgment reversed and cause remanded for further proceedings in conformity with the opinion of this court. Opinion by Mr. Justice Harlan. Dissenting, Mr. Chief Justice Waite, Mr. Justice Field and Mr. Justice Gray.

No. 136. Edward Burgess v. Jesse Seligman et al., ex., &c. To C. C. U. S., E. D. Miss. Judgment affirmed. Opinion by Mr. Justice Bradley.

No. 908. Toney Pace v. The State of Ala. To S. C., State of Ala. Judgment affirmed. Opinion by Mr. Justice Field.

No. 45. Benj. Hayden v. Charles Manning. From C. C. U. S., D. of Oregon. Decree reversed and cause remanded with directions to dismiss the bill without prejudice. Opinion by Mr. Justice Miller.

No. 154. The Township of Chickanning v. Samuel M. Carpenter. To the C. C. U. S., W. D. of Mich. Judgment affirmed. Opinion by Mr. Chief Justice Waite.

No. 1135. Robert R. Jenkins, assignee, etc., v. The International Bank of Chicago et al. To the Sup. Ct. of Ill. Judgment affirmed. Opinion by Mr. Justice Miller.

No. 1136. Same.

No. 1137. Same.

No. 1138. Same.

No. 838. The Chicago & Alton R. R. Co. v. The Wiggins Ferry Co. To the C. C. U. S., E. D. Mo. Judgment affirmed. Opinion by Mr. Chief Justice Waite.

No. 839. Same.

No. 914. The St. Louis, Iron Mountain & Southern R. R. Co. v. The Southern Express Co. C. C. U. S., E. D. Mo. Motion to dismiss denied. Opinion by Mr. Chief Justice Waite.

No. 994. The Missouri, Kansas & Texas R. R. Co. v. Wm. B. Dinsmore, pres., &c.

No. 879. The Memphis & Little Rock R. R. Co.

v. The Southern Express Co. C. C. U. S., E. D. of Ark. Motions to dismiss denied and motions for certiorari granted. Opinion by Mr. Chief Justice Waite.

No. 1204. John D. Batty v. H. S. Young et al. To the C. C. U. S., S. D. of Ill. Docketed and dismissed.

No. 1205. Warren Cummins, assignee, etc., v. C. S. Floyd, widow, etc., et al. From C. C. U. S., M. D. of Tenn. Docketed and dismissed.

No. 1017. John Crossley & Sons, intervenors, v. The City of New Orleans et al. S. C. of La. Motion to dismiss or affirm argued.

No. 104. Harry Stucky, assignee, etc., v. The Masonic Savings Bank et al. C. C. U. S. for Ky. Argued and submitted.

JAN. 30, 1883.

No. 299. The Edwin Forrest Home v. William B. Forrest. C. C. U. S., S. D. N. Y. Dismissed per stipulation.

No. 69. Joseph D. Stewart, adm'r, etc., v. Hamilton G. Fant. S. C. D. of C. Submitted by stipulation.

No. 106. George E. Bowden, receiver, etc., v. Jacob C. Johnson et al. C. C. U. S. for N. J. Argued and submitted.

JAN. 31, 1883.

No. 167. Cassius H. Read v. The City of Plattsmouth. C. C. U. S., D. of Nebraska. Argued and submitted.

No. 168. Peter F. Kendall v. The United States. C. of Cls. Argued and submitted.

FEB. 1, 1883.

No. 169. Charles H. Marshall v. The Steamship Adriatic, &c. C. C. U. S., S. D. of N. Y. Argued and submitted.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

##### GENERAL TERM.

Present, CARTTER, C. J., and Justices COX and JAMES.

JAN. 24, 1883:

E. E. Downham & Co. v. Ellen Kelly et al. Motion to dismiss appeal for failure to print record.

Looney v. Quill et al. and Quill v. Looney et al. Motion to dismiss.

Wm. E. Linn, of Md., was admitted to practice. Jaffray et al. v. Chandler et al. Case ordered dismissed.

John R. Bray et al. v. Steam Tug George W. Pride, etc. Same.

Christian C. Collins, of Tenn., John Johnson and L. M. Hosea, of Cincinnati, Ohio, were admitted to practice.

JAN. 25, 1883.

Andrew Runstittler et al. v. James W. Atkinson et al. Argued and submitted.

JAN. 26, 1883.

In re Charles H. Scott. Appeal from Comm'r of Patents. Argued and submitted.

Hopp v. Viegler. Leave granted to dispense printing bills, &c., in the case.

JAN. 29, 1883.

Charles P. Lincoln, of Miss., was admitted to practice.

Miletus J. Wine v. Amanda S. Hosmer et al. Appeal dismissed and cause remanded to Special Term.

The U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen. Agreed that the rule to show cause, &c., shall stand in lieu of and be treated as an alternative writ of mandamus.

JAN. 30, 1883.

The U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen. Submitted.

FEB. 1, 1883.

Charles Coleman v. Christian Heurich and William Neil v. Christian Heurich. Argument concluded and case submitted.

Joel F. Kinney v. James F. Meguire et al. Dismissing appeal.

The Leonard Silk Co. v. George N. Day. Appeal from Special Term refusing to grant a new trial upon exceptions. Judgment affirmed.

FEB. 2, 1883.

Cousins et al. v. Strasburger. Motion to dismiss for want of jurisdiction.

Rich v. Henry. Same.

The President and Directors of Gonzaga College v. Robert J. Douglas. Judgment of Special Term affirmed.

Patrick Foley v. John B. Blake et al. Same.

Susan L. Wallach v. Anne R. Shuster et al. Argued and submitted.

#### EQUITY COURT.—Justice Hagner.

JAN. 22, 1883.

Bowie v. Pickrell. F. & M. Bank allowed to intervene.

Dodge v. Offley. Sale finally ratified and cause referred to auditor.

Wollard v. Perry. Trustee directed to sign deed.

Doyle v. Giddings. Demurrer overruled and leave to answer.

JAN. 23, 1883.

Morgan v. Thomson. Decree for release.

King v. Von Essen Estate. Decree substituting trustee, &c.

JAN. 24, 1883.

Swan v. Alexander. Bill dismissed.

Neumeyer v. Neumeyer. Sale ratified nisi.

Morgan v. Morgan. Divorce granted with \$25 per month alimony.

Shelton v. Ware. Auditor's fee ordered paid.

JAN. 25, 1883.

Cratly v. Gelston. Bill dismissed.

Barker v. Pinn. Rule on trustee returnable February 1, 1883.

Randall v. Reed. Trustee directed to loan money.

Rehm v. Keppler. Petition of defendant dismissed.

Anderson v. Howgate. Trustee directed to accept offer.

JAN. 26, 1883.

Denmead v. Denmead. Referred to auditor to ascertain counsel's fee.

Phoenix, &c., v. Grant. Order refused.

JAN. 30, 1883.

Rothrock v. Parker. Rule on defendant granted.

Denmead v. Denmead. Reference to auditor.

Bradley v. Bradley. Testimony of non-resident witness ordered taken.

Central Nat. Bank v. Hume. Farmers' & Mechanics' Bank of Georgetown allowed to intervene.

King v. Essex. Sale and investment in U. S. bonds allowed.

Blake v. Fant. Assignment of judgment ordered.

Tucker v. Ohlsen. Sale finally ratified and reference to auditor.

Chandler v. Phillips. Testimony before examiner ordered taken.

Waters v. Waters et al. Appearance of absent defendant ordered.  
 Dodge v. Hayden. Bill dismissed.  
 Spear v. Coyle. Account of trustee ratified and confirmed.

Ramsey v. Leib. Reference to auditor.

JAN. 31, 1883.

Cocker v. Ryan. Trustee allowed to receive payment in advance.

Young v. Walsh. Testimony ordered taken.

Rehm v. Keppler. Leave given to file bill of review.

FEB. 2, 1883.

York v. Mann. Decree pro confesso set aside with leave to answer.

Lazenby v. Lazenby. Complainant ordered to pay fund into court.

**CIRCUIT COURT.—Justice Mac Arthur.**

JAN. 24, 1883.

Gunnel v. Revells. Judgment set aside.

Morancy v. Nallor et al. Verdict for defendant.

George v. American Rapid Tel. Co. Suit dismissed by plaintiff.

Carter v. Denain. Judgment for plaintiff for \$6.

Gothaier v. Burns. Verdict for plaintiff for possession, &c.

Gardner v. Riley. Judgment of justice of the peace affirmed.

Kelly v. Courninin. Verdict for plaintiff for \$43.

Waggaman v. Godfrey et al. Verdict for plaintiff for possession, &c.

JAN. 25, 1883.

Hanner et al. v. Douglass. Motion to set aside judgment granted.

Bryan v. Jones. Verdict for plaintiff.

Northern Liberty Market Co. v. Kesmer. Suit dismissed.

Reeder v. Sellinger. Verdict for \$25. Motion for new trial filed.

JAN. 26, 1883.

Wyndham v. Buchanan. Verdict for plaintiff for \$32.37.

Stevens v. Pullman et al. Verdict for plaintiff for \$1,441.

Wannamaker & Co. v. Hunter. Stricken off the calendar.

Miller v. Balto. & Pot. R. R. Co. Same.

Tyson v. Howgate. Same.

Moore v. Barber et al. Same.

Newburger et al. v. Samstag. Leave to plead.

Sand et al. v. Roessale. Settled.

Gorham v. Barnes et ux. Motion for new trial filed.

JAN. 27, 1883.

Keyser v. McDevitt. Motion for judgment granted.

Citizens' Nat. Bank v. Randall. Leave granted to withdraw notes.

Hammond v. Green. Motion for judgment on award granted.

Johnson v. Henry. Motion to vacate order sitting aside judgment overruled.

Garner v. Guy et al. Motion to amend declaration granted.

Fuller v. Mackall. Motion to vacate order for bill of particulars overruled.

Johnson v. Randall. Motion for judgment not allowed.

Hume v. Sheely. Same.

Eastwood v. Teulon. Same.

Reeder v. Selinger. Motion for new trial denied.

Kelly v. Carusi. Same.

Thompson v. Shepherd. Motion to suppress deposition overruled.

Gardner v. Riley. Motion to set aside judgment overruled.

JAN. 29, 1883.

Young v. Kirk. Judgment for plaintiff.

Riley v. Williams. Judgment for defendant on demurrer.

Johnson & Co. v. Miller. Leave granted to amend pleas.

Wyndham v. Buchanan. Motion for new trial filed.

JAN. 30, 1883.

Hill v. Capital Publishing Co. Settled.

Campbell v. Dist. of Col. Verdict for defendant. Bill of exceptions taken.

Belmont v. Wash. & G. R. R. Co. Referred to auditor.

JAN. 31, 1883.

Kengla v. Randall. Judgment by confession.

Miller et al. v. Bennett et al. Death of Bennett suggested and cause continued.

FEB. 1, 1883.

Johnson v. Douglass. Verdict for defendant for \$25.

Parker v. Parish. Plaintiff called and suit dismissed.

Dalley v. Brook, adm'r. Verdict for defendant for \$267.33.

Harris et al. v. Dammann. Motion to quash attachment granted.

FEB. 2, 1883.

Miller v. Sullivan. Verdict for plaintiff. Nominal damages.

**CRIMINAL COURT.—Justice Wylie.**

JAN. 15, 1883.

U. S. v. Brady et al.

Anthony Joseph, Postmaster of Ojo Caliente, was the only witness examined.

JAN. 16, 1883.

James Sleeman was called for the purpose of introducing warrants. Anthony Joseph was recalled. Pedro J. Jarrimillo gave in his testimony, the competency of whose evidence was discussed, and held by the court competent.

JAN. 17, 1883.

Jarrimillo was again examined. Mr. Sweeny, Mr. Callahan and Mr. Olcott testified. The partial production of documents was objected to by the defendants, but the objection was not concurred in.

JAN. 18, 1883.

U. S. v. Brady et al.

Mr. Jarrimillo was examined for the defense. Antony Joseph was recalled by the Government. Nephi Johnson and W. D. Johnson were called, and testified.

JAN. 19, 1883.

U. S. v. Brady et al.

John M. Major was examined. Objection was made to the introduction of papers until their relevancy was revealed. Objection sustained. James McCormick testified as to the manner of making up reports of the arrival and departure of the mails at the post office where he was postmaster. The court called attention to sections 657 and 658 of the postal laws as to the regulations in regard to the mail service.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

34203. Clinton P. Farrolle v. Richard J. Hinton et al. Note, \$160. Pliffs atty, W. J. Newton.  
34204. Howell & Bros. v. William F. Clark. Notes, \$738. Pliffs atty, Birney & Birney.

JAN. 27, 1883.

34205. The Delaware and Chesapeake Improvement Co. v. Thomas P. Morgan, jr. Damages, \$10,000. Pliffs attys, Ashton & Wilson.  
34206 Same v. Thomas P. Morgan et al. Damages, \$10,000. Pliffs attys, same.  
34207. The Clin. Times Star Co. v. William T. Fitzgerald. Account, \$127.20. Pliffs atty, E. H. Thomas.

JAN. 29, 1883.

34208. The U. S. ex rel. William J. Jenkins v. Charles J. Folger. Mandamus. Pliffs attys, Earle and Lowndes.  
34209. Henry Kengla v. Ephraim S. Randall. Notes, \$1,200. Pliffs atty, Chas. S. Moore.  
34210. William E. Moore et al. v. Richard H. Trunnell Replevin. Pliffs attys, Cook & Cole.

JAN. 31, 1883.

34211. Samuel E. Lewis v. Baldwin Bros. Notes, \$441.10 Pliffs atty, W. F. Mattingly.  
34212. Windsor Ford v. Charles T. Davis. Notes, \$7,500. Pliffs atty, I. H. Ford.

### IN EQUITY.—New Suits.

JAN. 27, 1883.

3438. Mary Demaine v. Henry Demaine. For divorce. Com. sol., Sam'l. O. Mills.  
3439. Elizabeth M. Jacques v. Abram B. Jacques. For divorce. Com. sols., Woodward and Stone.

JAN. 30, 1883.

3440. Pierce McDonald v. May A. McDonald. For divorce Com. sol., J. G. Bigelow.

## Legal Notices.

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ann C. Carroll, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1883.

MARIA C. FITZHUGH, Executrix.

GEO. F. APPELT, Solicitor.

5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 30th day of January, 1883.  
PERCY LEE WATERS, by next friend.

No. 8233 Eq. Doc. 22.

JOSEPH G. WATERS ET AL.

On motion of the plaintiff, by Messrs. Saville and Fendall, his solicitors, it is ordered that the defendants, Isabella Weisel and Daniel Weisel, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 5-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 30, 1883.

In the matter of the Will of Noble Johnson, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Noble Johnson.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

GEO. F. GRAHAM, Solicitor.

5-3

## Legal Notice.

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ernest Dickas, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.  
ANNIE HEBSACKER, Executrix.

### THIS IS TO GIVE NOTICE.

That the subscriber, of New York City, N. Y., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. Hassall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

FREDERICK R. FALCONER, Executor.

JNO. F. ENNIS, Solicitor.

5-3

### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eliza L. Glover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1883.

SAM'L. O. MILLS, Administrator.

5-3

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Margaret Burke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

JEREMIAH O'SULLIVAN, Administrator.

HANNAH & JOHNSTON, Solicitors.

5-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 19, 1883.

In the matter of the Estate of William V. Crandall, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Parley H. Eaton, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 9th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

A. K. BROWN, Solicitor.

4-3

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louis Neurath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

CATHARINE E. NEURATH, Executrix.

HINE & THOMAS, Solicitors.

5-3

*Legal Notices.***THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William I. Dyer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1883.

JOSEPH E. DYER, Administrator.

F. W. JONES, Solicitor.

4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, January 19, 1883.**

In the matter of the Estate of James F. Meguire, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Lewis S. Wells, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

HIDE & THOMAS, Solicitors.

4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

In re Estate of James H. Cansten, deceased.

This cause coming on to be heard on the application of Mary Emma Carvallo, for the removal of James H. C. Young, Administrator, de bonis non of the estate of James H. Cansten, deceased, it is, this 19th day of January, A. D. 1883, ordered, that said James H. C. Young, show cause why he should not be removed as such Administrator on or before the second day of February, A. D. 1883. Provided, a copy of this notice be published once a week for two weeks in the Washington Law Reporter before the said 2d day of February, 1883.

A true copy. A. B. HAGNER, Asso. Justice.

Test: 4-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of January, 1883.**

CATHARINE OURAND

No. 8428. Equity Docket, 22

GEORGE E. OURAND ET AL.

On motion of the plaintiff, by Messrs. Appleby & Edmonston, her solicitors, it is ordered that the defendant, John M. Riggs, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 4-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Perry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1883,

WALTER S. PERRY, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

VIRGINIA TAYLOR

No. 8,328. Eq. Doc. 22.

H. A. TAYLOR ET AL.

Upon coming in of the trustee's report made herein this day, relating to the sale of a certain pew, and upon motion of the trustee herein, it is, by the court, this 18th day of January, A. D. 1883, ordered, adjudged and decreed, that the sale of said pew to James M. Johnston as reported by the trustee be and the same is hereby in all things confirmed unless cause to the contrary be shown on or before the 15th day of February, A. D. 1883. Provided, also that a copy of this order be published in the Washington Law Reporter for three successive weeks before the last named day.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 3-9 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca T. Tompkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1883.

JOHN BECK, Administrator.

W. W. BOARMAN, Solicitor.

4-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles H. Morse, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1883.

LAURA A. MORSE.

GEO. F. APPELBY, Solicitor.

4-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Gebhard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1883.

GEORGE GEBHARD, Administrator.

4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of January, 1883.**

LORIN M. SAUNDERS

No. 8,420. Equity Docket, 22.

SAYLES J. BOWEN ET AL.

On motion of the plaintiff, by Mr. Daniel O'O Callaghan, his solicitor, it is ordered that the defendants, George R. Herriock, trustee, and Augusta V. Pfeiffer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. A. B. HAGNER, Justice.

True copy. Test: 4-3 E. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary A. Pearce, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1883.

WM. H. PEARCE, Administrator.

4-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES A. LANGLEY

No. 8,303. In Equity.

ELIZA FERRY ET AL.

On motion of the solicitor for plaintiff, it is, ordered by the court this 20th day of January, 1883, that the sale made by the trustee in this cause of the real estate in the proceedings mentioned, known as part of lots 11 and 12, in Davidson's subdivision of square No. 216, in the city of Washington, and by said trustee reported to this court, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 20th day of February, 1883. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said 20th day of February, 1883.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 4-3 R. J. MEIGS, Clerk.



## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 10th day of January, 1883.

**FRANK B. SMITH**

No. 8,410. Equity Docket.

**SUSAN BURCH ET AL.**

On motion of the plaintiffs, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Frank Horne, Laura M. Horne, John Francis Horne, Mary L. Horne, William J. Horne and Frances Ellen Horne, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
True Copy. 2-3 Test: **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 9th day of January, 1883.

**CHRISTIAN A. FLEETWOOD**

No. 8,415. Eq. Doc. 23.

**J. MALCOLM HAWKSWORTH,**  
SURVIVING TRUSTEE ET AL.

On motion of the plaintiff, by Mr. Jas. H. Smith, his solicitor, it is ordered that the defendant, J. Malcolm Hawksworth, surviving trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
A true copy. Test: 2-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**ELIZABETH A. MOORE ET AL.**

No. 6,192. Eq. Doc. 18.

**MARY E. HARRISON ET AL.**

James G. Payne and Edward H. Thomas, trustees, having reported the sale of lot six (6), of the subdivision of part of square numbered four hundred and fifty-eight (458), made and recorded by the heirs of William Whetcroft, deceased, to Peter Lattener, for the sum of ten thousand eight hundred [10,800], dollars, and the sale of the east half of the west half of lot eight (8), in square numbered five hundred and sixteen (516), fronting 16 feet on "I" street, by the depth of said lot to Robert Herman, for the sum of thirty-seven and one half [37½] cents per square foot:

It is, by the court this 9th day of January, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of February next. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said day.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 2-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**GEORGE W. SNOUFFER ET AL.**

No. 7,400. In Equity.

**FELIX GREENAPPLE ET AL.**

Upon consideration of the report of the trustee filed herein on January 4, 1883:

It is, this 10th day of January, A. D. 1883, ordered, that the sale made by them and therein reported be finally ratified and confirmed on February 10, 1883, unless cause be shown on or before that day. Provided, a copy hereof be inserted in the Washington Law Reporter once a week for three weeks prior to that day.

The report states that lot 102, of King's subdivision in square 492, was sold to Isaac Wenger, for \$1,380.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 2-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**ANNIE M. SHORMAKER ET AL.**

No. 8124. In Equity.

**AGNES CAMPBELL ET AL.**  
Francis Miller and E. Ross Perry, the trustees herein, having reported the sale of the property mentioned and described in the bill of complaint to the Metropolitan Railroad Company, at and for the sum of \$3,700, and the compliance of said company with the terms of sale:

It is, this 12th day of January, 1883, by the court, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 15th day of February, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three (3), successive weeks before said 15th day of February, 1883.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 4-3 **E. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**ALBERT BURNBY BIBB**

No. 7,760. Equity.

**LUCY HUNTER ET AL.**

John W. Pilling, trustee, having reported that he has sold the east part of lot one hundred (100), in Threlkeld's addition to the city of Georgetown, with the improvements thereon, to Albert Burney Bibb, for the sum of eight hundred (\$800), dollars:

It is, this 2nd day of January, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 5th day of February, A. D. 1883. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. **A. B. HAGNER, Asso. Justice.**  
True copy. Test: 2-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**H. W. BURCH ET AL.**

No. 8298. Eq. Doc. 22.

**JOHN E. BURCH ET AL.**

Henry C. Coburn, the trustee appointed by the decree of this court in this cause to sell the real estate in the proceedings mentioned having reported to the court an offer from Joseph Forrest, of nine hundred dollars [\$900], for the west half of lot No. 8, in square 238, one of the pieces of property mentioned in the first report of said trustee filed in this cause on December 23, 1882, as having been duly offered for sale at public auction and withdrawn because no bid thereon was received:

It is, on this 16th day of January, 1883, ordered, that the said offer of the said Forrest be and the same is hereby accepted, and it is further ordered and decreed that the sale of said property to the said Forrest be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 16th day of February, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before the said 16th day of February, A. D. 1883.

By the Court. **A. B. HAGNER, Asso. Justice.**  
A true copy. Test: 2-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of January, 1883.

**JESSE LEE ADAMS ET AL.**

No. 8408. Eq. Doc. 22.

**JAMES L. ADAMS ET AL.**

On motion of the plaintiffs by Mr. B. T. Hanley, their solicitor, it is ordered that the defendants, James L. Adams, Walter G. Adams and Norval W. Adams, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
True copy. Test: 3-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. January 12, 1883.

In the case of Richard T. Morsell, Administrator of Charity L. Farr, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 9th day of February A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 3-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 18th day of January, 1883.

**CHARLES GERSDORFF**

No. 8431. Equity Docket 22.

**MARIA GERSDORFF**

On motion of the plaintiff, by Mr. Leon Tobriner, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
True copy. 2-3 Test: **E. J. MEIGS, Clerk.**

# Washington Law Reporter

WASHINGTON - - - - February 10, 1883

GEORGE B. CORKHILL - - - EDITOR

## Action of Covenant upon Covenant with a Partnership by its Firm Name only.

An action of covenant was brought in the circuit court by Silas Seymour and others, as co-partners trading in the name and style of S. Seymour & Company, against the Western Railroad Co., upon an agreement between the railroad company and Silas Seymour, and such other parties as he may associate with him, under the name of S. Seymour & Co., for the construction of a railroad by the said S. Seymour & Co., in consideration of which construction the railroad company agreed to pay to the said "S. Seymour & Co." certain sums of money, &c. The agreement was duly signed and sealed in behalf of the defendant, and was also signed "S. Seymour & Co.," but was not otherwise signed and sealed in behalf of the plaintiffs or either of them.

At the trial the plaintiffs proved the execution of the agreement declared on, and offered evidence tending to show that Seymour executed it in behalf and by authority of the firm of S. Seymour & Co.; that the plaintiffs, at its date and until the subsequent stoppage of work under it, composed that firm; that Seymour and the three other persons whom he had associated with him immediately began and afterwards performed work for the road under the agreement, the results of which the road had since enjoyed, and that the defendant road knew that the plaintiffs composed the firm of S. Seymour & Co., and were working on the road under the agreement as contractors.

This evidence was excluded by the court on the ground of a variance, and a verdict was had for the defendants. Upon error to the Supreme Court of the United States, the rulings below were held to be erroneous; that in an action of covenant all the covenantees must join, although only one of them seals

the agreement. *Petric v. Bury*, 5 D. & R., 152; S. C. 3 B. & C., 353; P., W. & B. R. R. Co. v. Howard, 13 How., 307, 337. That it is not necessary that all of them should be named in the contract, it is sufficient that they are so described therein that they can be identified. *Shep. Touchstone*, 236, *Gresty v. Gibson*, L. R., 1 Ex., 112; *Reeves v. Watts*, L. R., 1 Q. B., 412; S. C., 7 B. & S., 523; *McLaren v. Baxter*; L. R., 2 C. P., 559. That upon a covenant with a partnership, by its partnership name only, all who are partners at the time of its execution may sue. *Hoffman v. Porter*, 2 Brock, 156; *Brown v. Bostian*, 6 Jones (N. C.), 1; *Lindley on Partnership* (4th ed.), 476.—(*Opinion by Mr. Justice Gray. Oct. Term, 1882.*)

## Book Notice.

**COPP'S PUBLIC LAND LAWS.** Embracing the laws passed by Congress from March 4, 1875, to April 1, 1882, with the Important Decisions and Circular Instructions under the public land laws promulgated during the same period. By Henry N. Copp, Washington, D. C. 2 Vols.

This work contains, exclusive of Index and List of Cases, 1468 pages, and takes up the subject stated in the title from the time the publisher left it in his first volume of Public Land Laws, published in 1872. It contains all the land laws and decisions during the period referred to except those relating to mineral lands.

Aside from their real merits, Mr. Copp's books are particularly valuable when considered in connection with his publication of the *Land Owner*, which produces once a month all new legislation and the important decisions of the Department and the courts upon the subject of the public land laws. Vol. IX of the *Land Owner* continues the subject from the period covered by the book.

By the use of these volumes the practitioner, by searching under the proper heading, can be readily advised of the latest decisions upon any of the public land laws, without being compelled to search through a long list of periodicals. This is, we believe, the only work in book form upon this subject which covers the period of time indicated. It is recommended to the profession for all that it claims to be.

# Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

SAMUEL J. ANDREWS

v.

THE CAPITOL, NORTH O STREET AND SOUTH  
WASHINGTON R. R. CO.

At Law. No. 16,505.

{ Decided December 2, 1882.  
The CHIEF JUSTICE and Justices COX  
and JAMES sitting.

1. Where there is abundant standing room inside of a street car, in which there are pendent straps which a passenger may hold while standing, he is guilty of contributory negligence who rides upon the platform, and if an injury result to him which would not have occurred had he been in the inside of the car, he cannot maintain an action for such injury.
2. In an action to recover damages for injuries sustained while riding on the platform of a street car, the court will presume, in the absence of evidence to the contrary, that the car was a good one.

## STATEMENT OF THE CASE.

Motion for judgment on the following special verdict:

"We, the jury, duly impanelled and sworn to try the issue joined in the above entitled cause, find the following to be the facts in the case, as made by the plaintiff and defendant, to wit:

"The defendant is a corporation created by act of Congress, operating a street railroad in the city of Washington.

"On the evening of the 20th of August, 1876, the plaintiff hailed one of the defendant's cars, which, answering his call, stopped on the corner of Twelfth and E streets, northwest, in the city of Washington. The plaintiff stepped upon the rear platform, where he stood a few seconds, and then advancing to the door, which was open, looked in, as though searching for a seat, but seeing none he stepped back on the platform. The car continuing its course east on E street, the driver rang his bell to remind the plaintiff of his fair. He thereupon commenced feeling in his vest pockets for it, and having found it stepped forward, and had one foot within the car. He had hold of the jam of the door with one hand and held his fare in the other, and while hesitating whether to pass up his fare or to go forward with it himself, the car struck the curve at the corner of Eleventh and E streets, where the road changes its course from east to north, producing a jar, which caused the plaintiff to

be thrown backwards upon the railing of the rear platform, and from thence to the ground, and so seriously injured as to be permanently disabled. The car, at the time of the accident, was going at a medium rate of speed, which was not slackened at the curve.

"The cars upon the defendant's road, like those of most other roads in this city, have no conductors or agents inside the car to collect the fares. The driver has exclusive control of the car, but is not allowed to receive fares, and the passengers are required to deposit their fares in a box at the front end of the car.

"The plaintiff had frequently ridden upon the defendant's cars, and was familiar with the streets where the accident occurred. The car was from twenty to thirty seconds in going from where the plaintiff got aboard to the curve.

"The seats inside were all comfortably filled, so that the plaintiff could not have gotten a seat, without room had been made for him by the passengers sitting closer together. With the exception of one white lady and gentleman, the passengers were all colored persons. They were orderly and well behaved.

"There was plenty of room for the plaintiff to have stood in the aisle of the car, and there were straps pendent from the roof, or from rods running lengthwise of the car near the roof, which were intended for standing passengers to hold on to.

"There were no standing passengers inside the car. The driver knew that the plaintiff was riding on the platform, and made no objection to it. Passengers sometimes rode upon the platforms of the defendant's cars, and no objection was ever made to it by any of the officers or agents of the company. After this accident the defendant caused the rear platform to be removed from all their cars and substituted a single step to enable passengers to get into and out of the cars. The former platforms were the same as are usually attached to street cars, and were designed only for the convenience of passengers in entering and leaving the cars. No person inside the car was injured at the time of the accident to the plaintiff.

"The foregoing facts considered, we, the jury, say that we are ignorant in point of law on which side we ought to find the issue; and if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, we find for the plaintiff accordingly, and assess his damages at twenty-six hundred dollars besides costs; but if the court be of an opposite opinion, then we find for the defendant."

Under the 99th rule of court the plaintiff

moved the court in general term for judgment on this special verdict.

S. S. HENKLE for plaintiff:

It is settled by the special verdict, that the car striking the curve, *produced a jar*, which caused the plaintiff to be thrown off and consequently injured; and the permanent injury shows that the force which threw him off must have been violent. It is perfectly certain if the driver had slackened the speed of his horse at the curve to a walk, the accident would not have occurred. Is there any escape from the conclusion that the failure of the driver to slacken his speed at the curve, was negligence? In *Stokes v. Saltenstall*, 13 Pet., 190, the Supreme Court of the United States says: "But although he [the carrier] does not warrant the safety of the passengers at all events, yet his undertaking and liability go to this extent, that he, or his agent, if as in this case, he acts by agent, shall possess competent skill; and that, as far as human care and foresight can go, he will transport them safely." The suit was against the proprietors of a stage coach for an injury to a passenger. And the doctrine of this case has been followed in all the cases. *Peck v. Neil*, 3 McLean, 22; *Muer v. Penn. R. R. Co.*, 64 Penn. St. R., 225; *Shearman & Redfield on Negligence*, Sec. 266, and cases cited.

Is the defendant chargeable with contributory negligence? If not he is clearly entitled to a judgment.

I maintain that it is not contributory negligence for a passenger upon a street car to ride upon the rear platform, if there are no vacant seats inside the car, and he is there by the permission or with the knowledge of the agent of the company, who makes no objection to it.

In the case of *Messel v. Lynn & Boston R. R. Co.*, 8 Allen, 234, the plaintiff was injured while riding upon the front platform of a street car. The car was full, and he was told to go upon the platform by the conductor. The driver accelerated his speed in turning a curve, and the plaintiff was thrown off and injured; held that it is not necessarily unsafe to ride upon the front platform of a street car, and the plaintiff was not bound to know that the driver would go fast around the curve. He should have slackened his speed, and not doing so was negligence, and standing on the platform was not contributory negligence. And see to same effect, *Spofford v. Harlow*, 3 Allen, 176; *Burns v. Bellefontaine R. R. Co.*, 50 Mo., 139; *Germantown R. R. Co. v. Walling*, 97 Pa. St., 55; *Maguire v. Middlesex R. R. Co.*, 115 Mass., 239; *Spooner v. Brooklyn*

*City R. R. Co.*, 54 N. Y., 230. The foregoing are all cases of injuries to passengers upon cars and other vehicles drawn by horses. The following are cases of injuries to passengers upon cars drawn by steam: *Edgerton v. N. Y. & Har. R. R. Co.*, 39 N. Y., 227; *Colgrove v. Harlem R. R. Co.*, 6 Duer, 382; *Willis v. Long Island R. R. Co.*, 34 N. Y., 670; *Zemp v. W. & M. R. R. Co.*, 9 Rich. Law, (S. C.), 84.

The doctrine deduced from the cases is—

1st. That riding upon the platform of either a horse or a steam car is not *per se* negligence, but is a question for a jury.

2d. That riding upon the platform of a horse car certainly, by the permission or with the knowledge and without objection of the agent of the company in charge of the car, is not negligence.

3. That it is the duty of a railroad company to furnish its passengers seats within the car, and if it does not a passenger may ride upon the platform, and if injured by the negligence of the carrier while so doing, this fact is not available in defense as contributory negligence.

4th. Although the company may provide pendent straps from the roof of the car for passengers standing in the aisle to hold on to, the company cannot require, and should not permit, passengers to stand in the aisle, as the other passengers have a right to have the aisle kept open and unobstructed.

5th. As a matter of fact the rear platform of a horse car is not ordinarily a place of any more danger than the inside of the car, and it only becomes so when overcrowded, or by the negligence or misconduct of the driver.

6th. The railroad companies give the public to understand that the platforms of their cars are safe places to ride upon, and habitually stop for passengers and invite them to get on so long as there is standing room upon the platform or steps, and it would be strange indeed, if, when a passenger is injured while riding upon the platform by the negligence of the company, it should be permitted to set up this fact as contributory negligence.

In this case the seats were all full. The driver knew this, and yet stopped for the plaintiff to get on. He knew he was riding upon the platform and made no objection to it. They were in the habit of carrying passengers upon their platforms. Upon these facts how can the defendant escape liability?

It may be said that the plaintiff knew the streets and should have looked out for the curve. The reply is, that the plaintiff had a right to rely upon the prudence and care of the driver, and it was not his duty to antici-

pate that he would go whirling round the curve at such speed as to throw him off.

HINE & THOMAS for defendant:

The plaintiff predicates his right to recover against defendant in his action upon the carelessness, negligence, and unskillfulness of defendant's driver—the bad condition of the track where the accident occurred, and the absence of negligence or want of care on his part. The special verdict is singularly silent on the question of the driver's unskillfulness and the bad condition of the track. The findings do not even inferentially show that defendant's track was in any worse condition at the point where the accident occurred than the curve necessarily made it. May we not, therefore, assume that the driver was careful and skillful, and that the track was in good condition? The averment of the declaration is: "That by reason of the carelessness, negligence, and unskillfulness of the driver, and the bad condition of the railway at or near the corner of E and Twelfth streets, and without any carelessness or negligence on his part, he (the plaintiff) was with great violence thrown from said car," &c. These were certainly conditions most material to the plaintiff's right to recover—their absence from the findings of the special verdict is not to be accounted for on any other hypothesis than that they were not true.

It does appear that the plaintiff had frequently ridden upon defendant's cars, and was familiar with the street where the accident occurred. May we not add, and was used to street car travel generally, and knew of the curve in the track of defendant's road at the corner of Eleventh and E streets, and that common observation had taught him that it was peculiarly dangerous to stand on the outside platform of a street car when it was rounding a curve?

The special verdict shows clearly that the plaintiff would have sustained no injury had he remained inside the car. His conduct was such that he could not recover had he received like injuries while travelling on a steam railway. Certainly, then, he cannot recover for injuries received, as in this case, on a street railway where the cars are drawn by horses, and the incidental dangers are few compared to the other mode of travel.

By voluntarily taking a stand and remaining on the outside platform of the car while it was in motion and rounding a curve, when there was plenty of room for him to have stood on the inside, the plaintiff committed such a flagrant act of contributory negligence as disentitles him to recover for the injuries he

sustained. He must charge his injuries to his own want of care.

"The rule is without exception," says Mr. Redfield in his note to *McClurgs' Case* (56 Pa., 294), 2 Am. Ry. Cases, 552, "in all the well considered cases, that the plaintiff cannot recover for any damages he may sustain where his own want of ordinary care contributed directly towards it, however great or extreme may have been the negligence on the part of the defendant."

See the case of *Railroad Co. v. Jones* (5 Otto, 439), which was a much stronger case in every particular than this. And see, also, *Hickey v. Boston & Lowell R. R. Co.*, 14 Allen (Mass.), 429; *Todd v. Old Colony R. R. Co.*, 3 Id., 18; *Gaverett v. M. & L. R. R. Co.*, 16 Gray (Mass.), 501; *Lucas v. N. B. & T. R. R. Co.*, 6 Id., 64; *Ward v. R. R. Co.*, 2 Abb. (N. Y.) Pr. N. S., 411; *Galena & Chicago Union R. R. Co. v. Yarwood*, 15 Ill., 468; *Doggett v. Illinois Central R. R. Co.*, 34 Iowa, 284; *Pittsburg & Connellsville R. R. Co. v. Andrews*, 39 Md., 329; *Geis' Case*, 31 Md., 266; *Pittsburg & Connellsville R. R. v. McClurg*, 56 Pa. State, 294; *Penna. R. R. Co. v. Zebe and Wife*, 9 Casey, 218.

Mr. Chief-Justice CARTER delivered the opinion of the court, in substance as follows:

The plaintiff brings this suit to recover damages for injuries received by reason of being thrown from the rear platform of the car of the defendant, a street railroad company. By a special verdict of a jury, the extent of his damages are fixed at \$2,600, and he is entitled to recover this, provided the facts in the case form the predicate of a right of action.

The declaration charges, in substance, that the defendant corporation, in its carelessness and through the heedlessness and recklessness of its driver, and by reason of insufficient facilities for carrying passengers safely, caused this injury, and that the plaintiff made no contribution to this accident.

The allegations of the declaration are denied by the defendant, and, issue being joined we are invited to a consideration of the law governing the facts of the case as set forth in the special verdict. The verdict shows that the car was travelling at ordinary speed in the ordinary way. There is nothing reflecting upon the skill of the driver, or attributing fault on his part. The statement of facts also advises the court that the car was a good one, for in default of proof to the contrary it will be presumed to have been so. Now we are admonished by authority, that while public carriers are chargeable with strict care and circumspection in the preservation of the

safety of passengers, they are not insurers in any event of the passenger's life and limbs. Here is a car travelling at an ordinary rate of speed, a good car with a good driver, and, unless the law underwrites the life and safety of every passenger riding on a railroad car, these facts constitute a full answer to the plaintiff. The law does not contemplate that these corporations shall take the keeping of a man's discretion into their hands. If the plaintiff saw fit, under the facts found in this verdict, to stand on the platform, he took with him the perils of the platform, and cannot recover.

The judgment, therefore, must be for the defendant.

JAMES, J.: I desire to add a word as to the defendant's part in this case. I concur with the view that the plaintiff was responsible, or rather that he lost his right of action by contributing to the result; but I have not the least doubt that the defendant company was in fault. The special verdict found as a fact that the car was going around a curve at the same speed at which they ordinarily travel in a straight line. That is too fast to go around a curve, but it is said to be necessary from the construction of the car and from the fact that they have to go around pretty rapidly with one horse; so that the rapid speed which they keep up in rounding a curve is largely attributable to the arrangement which they have chosen to make so as to use only one horse. I think, therefore, that the defendant was also in fault; but the plaintiff ought not to recover when his own act contributed to the accident. It is for this reason that I concur in the judgment.

**LIFE INSURANCE VERDICT.**—A New York dispatch says: "In the suit of Regina Hesselberger against the Connecticut Mutual Life Insurance Company, to recover \$10,000 on a policy of insurance granted to Felix H. Hyman, now deceased, and transferred by Hyman to Hesselberger to secure a debt, and by him transferred to his wife, the jury to-day rendered a verdict for the company, on the ground that Hyman died of delirium tremens."

**MISCEGENATION LAWS CONSTITUTIONAL.**—In a case pending in the United States Supreme Court involving the constitutionality of the law of Alabama, prohibiting intermarriages between whites and negroes, the court holds, that such laws do not violate any provision of the Constitution of the United States, and that such laws are within the police power of the State.

## United States Supreme Court.

No. 96.—OCTOBER TERM, 1892.

**Exemption Laws. Liberal Construction of, in Favor of Debtor.**

HENRY FINK, UNITED STATES MARSHAL FOR the Eastern District of Wisconsin, Appellant,

vs.

THOMAS O'NEIL.

*Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.*

Mr. Justice MATTHEWS delivered the opinion of the Court.

This is a bill in equity filed by the appellee praying for a perpetual injunction to restrain the appellant, then United States marshal for the district, from further proceeding under a *fi. fa.*, issued upon a judgment rendered in favor of the United States in the District Court for the Eastern District of Wisconsin, against the appellee and others, and which had been levied on real estate alleged to be the homestead of the appellee, and exempt under the laws of that State from sale on execution. The premises levied on are described in the bill as forty acres of land, with a dwelling house and appurtenances thereon, occupied by the appellee as a residence for himself and family, consisting of his wife and seven children, the same being used for agricultural purposes, not included in any town, city, or village plot, and alleged to be of the value of six thousand dollars and upwards; and it is averred that the cause of action upon which the judgment was rendered was not for any debt or liability contracted prior to January 1, 1849.

To this bill there was filed a general demurrer, for want of equity, which being overruled, and the appellant declining to answer or plead, a decree was rendered granting the relief prayed for, from which this appeal is prosecuted.

The provision of the statute of Wisconsin on the subject of homestead exemptions, the benefit of which was secured to the appellee by the decree appealed from, is as follows:

"A homestead to be selected by the owner thereof, consisting, when not included in any village or city, of any quantity of land, not exceeding forty acres, used for agricultural purposes, and when included in any city or village, of a quantity of land not exceeding one-fourth of an acre, and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this State, shall be

exempt from seizure or sale on execution, from the lien of every judgment, and from liability in any form for the debts of such owner, except laborers', mechanics', and purchase-money liens, and mortgages lawfully executed, and taxes lawfully assessed, and except as otherwise specially provided in these statutes," &c. Rev. Stat. Wisconsin of 1878, 783, ch. 130, sec. 2,983.

This statutory provision was enacted in express compliance with a constitutional injunction, wherein it was declared, in the 17th section of the Bill of Rights, that "the privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws." *Phelps v. Rooney*, 9 Wis., 70-83.

And it has been the constant policy of the State in this legislation, as construed by many decisions of its supreme court, to favor by liberal interpretations the exemptions in favor of the debtor. "For it cannot be denied," says that court, in *Hanson v. Edgar*, 34 Wis., 653-657, "that in all the enactments found in our statute books in regard to homestead exemption, the most sedulous care is manifest to secure the homestead to the debtor and to his wife and family against all debts not expressly charged upon it.

We have found no case in which the question has been raised, or where there has been any expression, whether the exemption would prevail or not, as to judgments in favor of the State; but we do not doubt, from the language of the constitutional and statutory provisions, and the rules of construction followed in other cases, that it would be held by its courts, if the question should be directly made, that the State, except as to taxes, which are expressly excepted, would be bound by the exemption.

In the case of *Doe ex dem. Gladney v. Deavors*, 11 Ga., 79, it was decided by the Supreme Court of Georgia, in 1852, that the State was bound by acts of the legislature exempting certain articles of personal property from levy and sale for debts, for the benefit of the wife and children of the debtor, so that they could not be seized and sold under execution for the payment of taxes. The court said, p. 89: "These laws are founded in a humane regard to the women and children of families. The preamble to the act of 1822 announces the grounds on which the legislature acted. 'Whereas' (is its language) 'it does not comport with justice and expediency to deprive innocent and helpless women and children of the means of subsistence, be it therefore enacted,' &c. . . . In our judgment, the State falls within the operation of a pub-

lic law, passed for the benefit of the poor, and the State is within the policy of our own legislation upon the subject-matter."

Mr. Thompson, in his *Treatise on Homesteads and Exemptions*, §386, says: "In many of the States this question is determined by the express provisions of statutes, which declare, in various terms, that nothing shall be exempt from execution where the debt, other than public taxes, is due the State; or where the debt is for public taxes legally assessed upon the homestead or other property; or where the demand is for a public wrong committed, punished by fine. But where the question has arisen, in the silence of statutes, the highest courts of the States, with two exceptions, have held otherwise."

The case of *The Commonwealth v. Cook*, 8 Bush., 220, which is one of the exceptions referred to, is shown, however, to have been materially qualified by the decision in *The Commonwealth v. Lay*, 12 Bush., 283. That of *Brooks v. The State*, 54 Ga., 36, turned on the point that the exemption claimed operated retrospectively, and was disallowed on the authority of *Gunn v. Barry*, 15 Wall., 610. So that in point of fact the decisions of State courts upon the point are practically unanimous.

It is said, however, that the laws of the State creating these exemptions are not laws for the United States; and this is certainly true, unless they have been made each by Congress itself. This has not been an open question in this court since the decision in the case of *Wayman v. Southard*, 10 Wheat., 1, and of the *U. S. Bank v. Halstead*, 10 Wheat., 51. Mr. Justice Thompson, delivering the opinion of the court in the latter case, said: "An officer of the United States cannot in the discharge of his duty, be governed and controlled by State laws, any further than such laws have been adopted and sanctioned by the legislative authority of the United States. And he does not, in such case, act under the authority of the State law, but under that of the United States, which adopts such law. An execution is the fruit and end of the suit, and is very aptly called the life of the law. The suit does not terminate with the judgment; and all proceedings on the execution are proceedings in the suit," &c. In *Wayman v. Southard*, 10 Wheat., 49, Chief Justice Marshall had said that the proposition was "one of those political axioms, an attempt to demonstrate which would be a waste of argument not to be excused."

The question therefore is, whether the United States, by an appropriate legislative act, has adopted the laws of Wisconsin exempting

homesteads from execution, and, if at all, whether they apply in cases of executions upon judgments in favor of the United States.

Sec. 916 Rev. Stats., is as follows: "The party recovering a judgment in any common law cause in any circuit or district court, shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district courts; and such courts may, from time to time, by general rules, adopt such State laws as may hereafter be in force in such State in relation to remedies upon judgments as aforesaid, by execution or otherwise."

This provision, in its present form, has been in force since June 1, 1872, and is part of the sixth section of the act "to further the administration of justice," approved on that date. 17 Stat. at Large, 196. It is the result of a policy that originated with the organization of our judicial system. The 14th section of the judiciary act of 1789 (1 Stat. at Large, 81) provided that the courts of the United States should have "power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law;" and this was held to embrace executions upon judgments. *Wayman v. Southard*, 10 Wheat., 1. But simultaneously with the judiciary act, September 29, 1789, was passed the first "act to regulate processes in the courts of the United States," in which it was enacted, "that until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each State respectively as are now used or allowed in the supreme courts of the same."

This act was temporary, and expired by its own limitation at the end of the next session of Congress. The act of May 8, 1792, provided that the forms of writs, executions, and other process, and the forms and modes of proceeding in suits at common law, should continue to be the same as authorized by the act of 1789, "subject, however, to such alterations and additions as the said courts respectively shall in their discretion deem expedient, or to such regulations as the Supreme Court shall think proper, from time to time,

by rule to prescribe to any circuit or district court concerning the same." 1 Stat. at Large, 275. This legislation came under review in this court in the cases of *Wayman v. Southard* and *United States Bank v. Halstead*, in the latter of which it is said, 10 Wheaton, 60: "The general policy of all the laws on this subject is very apparent. It was intended to adopt and conform to the State process and proceedings as the general rule, but under such guards and checks as might be necessary to insure the due exercise of the powers of the courts of the United States. They have authority, therefore, from time to time, to alter the process in such manner as they shall deem expedient, and likewise to make additions thereto, which necessarily implies a power to enlarge the effect and operation of the process."

This discretionary power in the courts of the United States was restricted by the act of May 19, 1828 (4 Stat. at Large, 278), so that thereafter writs of execution and other final process issued on judgments rendered in any of the courts of the United States, and the proceedings thereupon, should be the same, except their style, in each State respectively, as were then used in the courts of such State; provided, however, that it should be in the power of the courts, if they saw fit in their discretion, by rule of court, so far to alter final process in said courts, as to conform the same to any change which might be adopted by the legislatures of the respective States for the State courts.

It will be seen from this provision that it was thereafter prohibited to the courts of the United States either to adopt or recognize any form of execution, or give any effect to it, except such as it was, at the time of the passage of the act, or had subsequently become at the time of their adoption, a writ authorized by the laws of the State. The same provision has ever since been continued in force, and is now embodied in §916 of the Revised Statutes, already quoted.

In *Beers v. Haughton*, 9 Peters, 329, which was governed by the act of 1828, it was held that "the words, 'the proceedings on the writs of execution and other final process,' must, from their very import, be construed to include all the laws which regulate the rights, duties, and conduct of officers in the service of such process, according to its exigency, upon the person or property of the execution debtor, and also all the exemptions from arrest or imprisonment under such process created by those laws."

It is further to be observed that no distinction is made, in any of these statutes on the



subject, between executions on judgments in favor of private parties and on those in favor of the United States. And as there is no provision as to the effect of executions at all, except as contained in this legislation, it follows necessarily that the exemptions from levy and sale, under executions of one class, apply equally to all, including those on judgments recovered by the United States. The general power to issue process, originally conferred by section 14 of the judiciary act of 1789, which now appears as section 716 Rev. Stats., as being in *pari materia* with that contained in section 916, must be construed as subject to the same limitations, especially as the general power is confined in express terms to writs not specifically provided for by statute, and hence, *ex vi termini*, embraces none included in the subsequent section. Besides, as was said by Chief-Justice Marshall, in *Wayman v. Southard*, 10 Wheat., 1-24, "this section provides singly for issuing the writ, and prescribes no rule for the conduct of the officer while obeying its mandate."

As the statute of Wisconsin, exempting homesteads from levy and sale upon executions, was in force at the time the act of Congress of June 1, 1872, took effect, and has remained so continuously from that time, it also follows that the exemption has thereby become a law of the United States within that State, and applies to executions issued upon judgments in civil causes recovered in their courts in their own name and behalf, equally with those upon judgments rendered in favor of private parties. Laws of Wisconsin for 1848, pp. 40-41; Rev. Stats., Wisconsin for 1871, §23, p. 1,548.

This conclusion cannot be avoided by the consideration which has been urged upon us, that the process acts do not limit the sovereign rights of the United States, upon the principle that the sovereign is not bound by such laws, unless he is expressly named. These laws are the expression of the sovereign will on the subject, and are conclusive upon the judicial and executive officers to whom they are addressed; and as they forbid the issue of an execution in every case, except subject to the limitation which they mention, and as there is no authority to issue an execution in any case whatever, except as conferred by them, the sovereign right invoked is left without the means of vindication. The United States cannot enforce the collection of a debt from an unwilling debtor, except by judicial process. They must bring a suit and obtain a judgment. To reap the fruit of that judgment they must cause an execution to issue. The courts have no inherent authority to

take any one of these steps, except as it may have been conferred by the legislative department, for they can exercise no jurisdiction, except as the law confers and limits it. And if the laws in question do not permit an execution to issue upon a judgment in favor of the United States, except subject to the exemptions which apply to citizens, there are no others which confer authority to issue any execution at all. For, as was said by Mr. Justice Daniel, in *Cary v. Curtis*, 3 How., 236-245, "the courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law."

This objection is also met expressly by the decision of this court in the case of *The United States v. Knight*, 14 Peters, 301. It was there decided that the act of May 19, 1828, gives the debtors imprisoned under executions from the courts of the United States, at the suit of the United States the privilege of jail limits in the several States, as they were fixed by the laws of the several States at the date of that act. It was there objected, as here, that the provision of the statute did not embrace executions issued on judgments rendered in favor of the United States, upon the ground that the United States are never to be considered as embraced in any statute, unless expressly named. Mr. Justice Barbour delivered the opinion of the court and said: "The words of this section 'being that writs of execution and other final process issued on judgments and decrees rendered in any of the courts of the United States,' it is obvious that the language is sufficiently comprehensive to embrace them, unless they are to be excluded by a construction founded upon the principle just stated." Referring to the maxim *nullum tempus occurrit regi*, he says it rests on the ground that no laches shall be imputed to the sovereign, but he adds: "Not upon any notion of prerogative; for even in England, where the doctrine is stated under the head of prerogative, this, in effect, means nothing more than that this exception is made from the statute for the public good; and the King represents the notion. The real ground is a great principle of public policy, which belongs alike to all governments, that the public interest should not be prejudiced by the negligence of public officers, to whose care they are confided. Without undertaking to lay down any general rule as applicable to cases of this kind, we feel satisfied that when, as in this case, a statute, which proposes only to regulate the mode of proceeding in suits, does not divest the public of any right, does

not violate any principle of public policy; but, on the contrary, makes provisions, in accordance with the policy which the government has indicated by many acts of previous legislation, to conform to State laws, in giving to persons imprisoned under their execution the privilege of jail limits; we shall best carry into effect the legislative intent, by construing the executions at the suit of the United States to be embraced within the act of 1828."

The same line of reasoning was adopted by this court in the case of *Green v. The United States*, 9 Wall., 655. It was there held that the act of July 2d, 1864, which enacts that in courts of the United States there shall be no exclusion of any witness in civil actions, "because he is a party to or interested in the issue tried;" and the amendatory act of March 3d, 1865, making certain exceptions to the rule, apply to civil actions in which the United States are a party as well as to those between private persons. It was argued by the Attorney-General that the statutes were meant to give both parties an equal standing in court in respect to evidence; that the United States not being able to testify, a party opposed to them should not be allowed to do so either; and that, independently of this, it was a rule of construction that "the King is not bound by an act of Parliament, unless he be named therein by special and particular words." Mr. Justice Bradley, who delivered the opinion of the court, replying to this argument, said: "It is urged that the Government is not bound by a law unless expressly named. We do not see why this rule of construction should apply to acts of legislation which lay down general rules of procedure in civil actions. The very fact that it is confined to civil actions would seem to show that Congress intended it to apply to actions in which the Government is a party, as well as those between private parties. For the United States is a necessary party in all criminal actions which are excluded *ex vi termini*; and if it had been the intent to exclude all other actions in which the Government is a party, it would have been more natural and more accurate to have expressly confined the law to actions in which the Government is not a party, instead of confining it to civil actions. It would then have corresponded precisely with such intent. Expressed as it is, the intent seems to embrace, instead of excluding, civil actions in which the Government is a party. Nothing adverse to this view can be gathered from the exceptions made in the amendment passed in 1865."

And although it has been decided by the

highest judicial tribunals in England (*Feather v. The Queen*, 6 B. & S., 257; *Dixon v. London Small Arms Co.*, L. R., 1 App. Cas., 632,) that the sovereign is entitled to the use of a patented process or invention without compensation to the patentee, because the privilege granted by the letters-patent is granted against the subjects only, and not against the Crown, a contrary doctrine was held by this court in *James v. Campbell*, 104 U. S., 356 to prevail in this country. Mr. Justice Bradley, delivering the opinion of the court in that case, said: "The United States has no such prerogative as that which is claimed by the sovereigns of England by which it can reserve to itself, either expressly or by implication, a superior dominion and use, in that which it grants by letters-patent to those who entitle themselves to such grants. The Government of the United States, as well as the citizen, is subject to the Constitution; and when it grants a patent, the grantee is entitled to it as a matter of right, and does not receive it, as was originally supposed to be the case in England, as a matter of grace and favor."

It is true that in the case of *The United States v. Herron*, 20 Wall., 251, it was decided that a debt due to the United States is not barred by the debtor's discharge with certificate under the bankrupt act of 1867; but in that case Mr. Justice Clifford took pains, by a careful collation of numerous provisions of the statute, to show that the words "creditor or creditors," as contained in the act, did not include the United States, adopting and extending the definition by Mr. Justice Blackburn, in *Woods v. De Mattos*, 3 Hurl. & Colt., 995, because used in the sense of persons having a claim which can be proved under the bankruptcy, and not required by the act to be paid in full in preference of all others. But the bankrupt act furnished clear evidence of the policy of Congress in reference to exemptions of property from sale for the payment of debts, by excepting from its operation personal property, necessary for the use of the family, to the amount of \$500, and such other property as was exempt from execution by the laws of the United States and of the state of the debtor's domicile. Rev. Stat., sec. 5,045. And Congress, since May 20, 1862, (12 Stat. at Large, 392,) when it passed the first act providing for the acquisition of homesteads for actual settlers upon the public lands, made their exemption from sale on execution a permanent part of a national policy, by declaring that lands so acquired should not "in any event become liable to the satisfaction of

any debt contracted prior to the issuing of the patent therefor." Rev. Stat., sec. 2,296; *Seymour v. Saunders*, 3 Dill., 437; *Russell Lowth*, 21 Minn., 167.

If a contrary construction to the process acts should be given, on the ground that they do not include the United States, which, although a litigant, continues nevertheless to exercise the prerogatives of a sovereign, it would follow that they might resort to any writ known to the common law, however antiquated or obsolete, and in defiance of the progress of enlightened legislation on that subject, revive all the hardships of imprisonment for debt, even without the liberty of local statutory jail limits. But that this is not within the meaning of these acts of Congress, we have positive and plenary proof in section 1,042 of the Revised Statutes. This was section 14 of the act of June 1, 1872, 17 Stat. at Large, 198. It provides that "when a poor convict sentenced by any court of the United States to pay a fine, or fine and cost, whether with or without imprisonment, has been confined in prison thirty days solely for the non-payment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him" an oath, the form of which is set out, in which he swears that he has not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of the State, where the oath is administered, and that he has no property in any way conveyed or concealed, or in any way disposed of, for his future use or benefit. "And thereupon," the statute proceeds, "such convict shall be discharged," &c. This section is repeated as section 5,296 Rev. Stat. U. S., under the title, Remission of fines, penalties and forfeitures.

Nothing can be more clear than this, as a recognition by Congress, that in case of executions upon judgments in civil actions, the United States are subject to the same exemptions as apply to private persons by the law of the State in which the property levied on

is found; and that, by this provision, in favor of poor convicts, it was intended, even in cases of sentences for fines for criminal offense against the laws of the United States, that the execution against property for its collection should be subjected to the same exemptions as in civil cases.

In the *Magdalen College Case*, 11 Rep., 66 b, Lord Coke, referring to Lord Berkeley's Case, Plowd., 246, declares that it was there held that the King was bound by the statute *De donis*, 13 Edw. I., because, for other reasons, "it was an act of preservation of the possession of noblemen, gentlemen and others," and "the said act," he continues, "shall not bind the King only, when he took an estate in his natural capacity, as to him and his heirs male of his body, but also when he claims an inheritance as King by his prerogative." By parity of reasoning, based on the public policy of States, where the people are the sovereign, laws which are acts of preservation of the home of the family, exclude the supposition of any adverse public interest, because none can be thought hostile to that, and the case is brought within the humane exception that identifies the public good with the private right, and declares "that general statutes, which provide necessary and profitable remedy for the maintenance of religion, the advancement of good learning and for the relief of the poor, shall be extended generally according to their words;" for civilization has no promise that is not nourished in the bosom of the secure and well-ordered household.

The decree of the circuit court is affirmed.

MR. JUSTICE MILLER commenced last night at the Law Rooms of the National University before a full class, a course of three lectures on Constitutional Law and Law of Nations. His subject last night was, "The Power of Congress to Regulate Commerce"; he will continue this subject next Friday evening; after concluding it he will take up the subject of "The Law of Nations," which he will continue the following Friday evening.

SALE OF LIQUOR.—In a prosecution for selling liquor without license, the fact that witness dropped a dime into a drawer and called for whiskey, whereupon the drawer passed through a partition, and came back with a glass of whiskey in it, but no person was seen or heard on the premises, was held sufficient to authorize the jury to infer that the sale was made by the defendant or by his authority and direction. *Showalter v. State*, Sup. Ct. of Ind. Dec., 1882.

## The Courts.

### U. S. Supreme Court Proceedings.

The following gentlemen were admitted to practice during the past week:

Edwin Sweetser, of Detroit, Mich.; F. C. Zacharie, of New Orleans, La.; Charles F. Miller, of New York City; Daniel G. Rollins, of New York City; Sherman W. Knevals, of New York City; H. R. Probanco, of Cincinnati, Ohio; M. E. Dunlap, of Erie, Penna.

FEB. 2, 1883.

No. 616. The Second Nat. Bank of Youngstown, Ohio, v. J. B. Hughes, auditor, etc., et al. From C. C. U. S., N. D. of Ohio. Dismissed per stipulation.

No. 673. The Mahoning Nat. Bank of Youngstown, Ohio, v. J. B. Hughes, auditor, etc., et al. Same. Same.

No. 170. Martin Baskett v. M. J. Hassell, etc. C. C. U. S., D. of Ind. Argued and submitted.

No. 171. Thomas A. Emmons v. John Kendrick. Appeal from C. C. U. S., D. of Mass. Dismissed.

No. 172. The Parkersburg & Ohio River Transportation Co. v. The City of Parkersburg et al. C. C. U. S., W. D. Va. Argued and submitted.

No. 173. The County of Morgan v. Charles F. Drake. C. C. U. S., W. D. Mo. Argued and submitted.

FEB. 5, 1883.

No. 490. Henry A. Turner v. The State of Maryland. To the C. of App. of Md. Judgment affirmed. Opinion by Mr. Justice Blatchford.

Nos. 163 and 165. Joseph L. Hall v. Neal Macneale et al. and Joseph L. Hall v. Mosler, Bahman & Co. From C. C. U. S., D. of Ohio. Decrees affirmed. Opinion by Mr. Justice Blatchford.

No. 143. Henry Z. Chapman et al. v. The Board of Commissioners of Douglass Co. From C. C. U. S., D. of Neb. Decree reversed and cause remanded. Opinion by Mr. Justice Matthews.

No. 1146. The County of Kankakee v. The Aetna Life Ins. Co. To C. C. U. S., N. D. of Ill. Judgment affirmed. Opinion by Mr. Justice Matthews.

No. 162. Moses Neal et al. v. The United States. From C. of Cls. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 867. The People of the State of New York v. The Campagne Generale Transatlantique. To C. C. U. S., S. D. of N. Y. Judgment affirmed. Opinion by Mr. Justice Miller.

No. 69. William D. Stewart, administrator of Joseph B. Stewart, v. Hamilton G. Fant. From S. C. Dist. of Col. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 157. The United States, Intervenor, v. James H. Wilson, receiver, &c. From C. C. U. S., M. D. Tenn. Opinion by Mr. Chief-Justice Waite.

No. 1042. The County of Madison v. Thompson M. Warren. To C. C. U. S., S. D. Ill. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1091. The County of Alexander v. John F. Kimball. Same. Same. Same.

No. 11. The United States v. The Erie Railroad Co. C. C. U. S., S. D. N. Y. Petition for rehearing denied. Opinion by Mr. Chief-Justice Waite.

No. 24. Augustus D. Juilliard v. Thomas S. Greenman. C. C. U. S., S. D. N. Y. Motion to

assign for argument denied. Opinion by Mr. Chief-Justice Waite.

No. 1208. Roe Stephens v. Sarah J. Whittimore. To S. C. State of Mich. On motion docketed and dismissed.

No. 924. Charles Vinchester v. Henry M. Loud. C. C. U. S., E. D. Mich. Submitted.

Ordered, That mandates issue in all cases decided prior to the first day of January, when applied for, except where a petition for rehearing is pending, and cases docketed and dismissed under the 9th rule.

Adjourned to Monday, March 5, 1883, at 12 o'clock.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

Present, CARTTER, C. J., and Justices COX and HAGNER.

FEB. 5, 1883.

Susan L. Wallach v. Annie R. Shuster et al. Motions to set aside judgments of a justice of the peace for want of jurisdiction, ordered by the Special Term to be heard by the General Term in the first instance. Motion sustained and remanded to the Special Term.

Andrew Runstiller et al. v. James W. Atkinson et al. Decree of Special Term affirmed.

In re Charles U. Scott. Appeal from Patent Office. Petition dismissed.

Ellida J. Middleton v. J. Stanley et al. Argued by counsel for complainant.

FEB. 6, 1883.

Dennis Looney v. Dennis Quill et al. and Dennis Quill v. Dennis Looney et al. Consolidated. Dismissed without costs. Appeal of Wm. B. Todd.

Samuel Strong v. Albert Grant. Argued and submitted.

Ellida J. Middleton v. J. Stanley et al. Argued and submitted.

FEB. 7, 1883.

Thomas Bannagan v. The District of Columbia. Argued and submitted.

Charles F. Wollard v. James McGee. Submitted without argument.

John Walters v. Richard B. Smith. Judgment of Special Term reversed; and attachment dismissed, and cause to proceed and to be tried at the Special Term.

William Joice v. E. P. Howland et al. Judgment of Special Term affirmed and cause to proceed as though no appeal had been taken.

FEB. 8, 1883.

John S. Tucker, of Va., was admitted to practice. Edward O. Russell was admitted on report of examining committee.

Charles F. Wollard v. James McGee. Judgment of Special Term affirmed.

James H. Cohen v. Robert Cohen, executor, &c. Argued and submitted.

Catharin v. Davis. Motion to dismiss appeal.

Katharine Tierney v. Frank E. Corbott et al. Hearing postponed to Monday, Feb. 12, 1883.

FEB. 9, 1883.

Robert G. Campbell v. The Dist. of Col. Judgment of Special Term affirmed.

Michael McCormick v. The Freedman's, &c. Ordered upon calendar.

Thomas Martin et al. v. George T. Howard. Judgment of Special Term reversed and cause remanded.

**EQUITY COURT.—Justice James.**

FEB. 5, 1883.

Tucker v. Ohlsen. Consent to change name.  
 Coulon v. Dist. of Col. Restraining order granted.  
 Dodge v. Offley. Confirmation of auditor's report.  
 Pfeiffer v. Straining. Sale finally ratified and confirmed.  
 Moore v. Harrison. Receiver appointed.  
 Walter v. Kimmell. Appearance of absent defendant ordered.  
 Adjourned *sine die*.

FEB. 6, 1883.

Woodruff v. Nat. Shelf & File Co. Set for hearing Feb. 7, 1883.  
 Stewart v. Stewart. Alimony and counsel fee allowed.  
 Balloch v. Hooper. 20 days further time to answer allowed.  
 Criseman v. Criseman. Rule on defendant returnable Feb. 14, 1883.  
 Fauquier Sulphur Spring Co. v. McLean. Security for costs ordered.

FEB. 7, 1883.

Diggs v. Jenifer. Sale finally ratified.  
 Cornelius v. De Vaughn. Same.  
 Shafer v. Wallis. Will of Wm. Wallis reformed.  
 Auld v. Cook. Appearance of absent defendant ordered.  
 Lord v. O'Donoghue. Decree pro confesso against Patrick O'Donoghue granted.  
 Chester v. Chester. Testimony before examiner ordered taken.  
 Groot v. Hitz. Auditor's report confirmed.  
 Crawford v. Bailey. Distribution of fund ordered.  
 Godfrey v. McMichael. Proceeds ordered to be paid into court.  
 Von Hooke v. Von Hooke. Rule discharged conditionally.

FEB. 8, 1883.

Swann v. Swann. Decree pro confesso against certain defendants.  
 Probasco v. Grammer. Trustee appointed and sale ordered.  
 Wall v. Dist. of Col. Certified to Gen'l Term.  
 Dutton v. Lewis. Testimony for defendant ordered taken.  
 Hammersley v. Hammersley. Testimony before examiner ordered taken.  
 Porter v. White. Defendant allowed to withdraw his demand.  
 Petter v. Shepherd. Referred to auditor.

FEB. 9, 1883.

Reynolds v. Reynolds. Testimony before examiner ordered.  
 White v. Sullivan. Decree pro confesso against certain defendants ordered.  
 Moore v. Moore. Auditor's report ratified.

**CIRCUIT COURT.—Justice Mac Arthur.**

FEB. 3, 1883.

Carroll v. Smith. Death of Ann C. Carroll suggested and cause revived.  
 Johnson v. Taylor. Demurrer overruled.  
 Gardner et al. v. Taylor. Same.  
 Hurdle v. District of Columbia. Demurrer overruled and leave to plead.  
 Kidwell v. Evans. Same.

FEB. 5, 1883.

Sands v. Frick. Verdict for plaintiff for \$100.  
 Sons & Daughters of Liberty No. 1. Leave to amend pleadings.

FEB. 6, 1883.

Nat. Bank of the Republic v. Shepherd. Judgment on stipulation.  
 Barbour et al. v. Kennedy. Judgment by default.  
 Matthew v. Moffat et al. Same.  
 Williamson v. Hill, jr. Verdict for defendant; motion for a new trial filed.  
 Sands v. Frick. Motion for a new trial filed.

FEB. 7, 1883.

Shepherd v. Bacon. Judgment by default.  
 Jones et al. v. Clark. Same.  
 Jones et al. v. Spelshouse. Same.  
 Beard et al. v. Walker. Same.  
 Neff v. Beall. Same.  
 Linn v. Smith. Same.  
 Linn v. Norton et al. Same.  
 Harlan v. Straight. Same.  
 Hill v. Bliss. Same.  
 Crawford et al. v. Salter et al. Same.  
 Cullinane v. Blumenberg. Order to take testimony in San Francisco.  
 Birch v. Blumenberg. Same.  
 Thompson v. Shepherd. Verdict for plaintiff for \$11,336.65.  
 Lange et al. v. Day et al. Verdict for defendant for \$122.

**PROBATE COURT.—Justice Hagner.**

JAN. 20, 1883.

Estate of Clark Mills. Will and codicils filed.  
 Petitions for letters, &c.  
 Estate of James F. Meguire. Collector bonded and qualified.

JAN. 22, 1883.

Estate of James F. Meguire. Letters issued and protest filed.  
 Estate of Geo. Gebhard. Administrator bonded and qualified.

JAN. 23, 1883.

Will of Hugh Kandler filed with petition of executrix.  
 Estate of Matthew H. Carpenter. Acc't of sales returned by administrator.

JAN. 24, 1883.

Estate of Wm. Stickney. Inventory returned by administratrix.  
 Estate of Patrick ———. New bond given by administrator.

JAN. 26, 1883.

Estate of Charles Perry. Sale ratified.  
 Will of Eugene Berry admitted to probate and record.  
 Will of Louis Neurath admitted to probate; letters issued and bond perfected.  
 In re John Bligh, guardian. Exceptions filed.  
 Estate of Ignatius Dyer. Orders for appointment of guardian and sale.  
 Will of Wm. J. Hassall proved; admitted and letters issued.  
 In re Margaret Leddy, minor. Guardian appointed and bonded.  
 In re Walter B. Bergevin. Same.  
 Will of Alexander Gardner fully proved.

JAN. 27, 1883.

Estate of Josephine Meeker. Petition of heirs renouncing their rights to administrate.

JAN. 29, 1883.

Estate of Elenor C. Gillet. Inventory returned.  
Estate of John P. Crutchet. Will filed and proved.

Will of Mattia Frazer filed.

Will of Jenny Sullivan proved.

Estate of John J. F. Joachim. Order refusing prayer and dismissing application.

Michael Leddy bonded as guardian to Margaret Leddy.

JAN. 30, 1883.

Estate of Jenny Sullivan. Will admitted to probate and record.

Will of August Koch filed.

Will of Noble Johnson. Petition for probate and letters of administration and order of publication.

**CRIMINAL COURT.—Justice Wylie.**

JAN. 20, 1883.

U. S. v. Louis Dodson, alias Dotson. Second offence larceny. Pleaded guilty. Sentenced for two years.

U. S. v. George Simms. House-breaking in the night. Pleaded guilty. Sentenced for five years.

U. S. v. James Johnson, alias Hill. Same.

U. S. v. Charles Montgomery. Same.

JAN. 22, 1883.

U. S. v. Brady et al.

James F. Brown, John Cary, Frank McBean, and A. S. Powers were examined and testified for the Government. Testimony as to route No. 44,160 was concluded, and route No. 44,140 was taken up. One of the witnesses was asked as to the amount of pay he received as a carrier. This question was objected to on the part of the defendants, because he had no knowledge of what was received by a sub-contractor even if he, the witness, had performed the service. Objection overruled.

JAN. 23, 1883.

U. S. v. Brady et al.

A. S. Powers and A. W. Moore were examined and testified on behalf of the Government, and were cross-examined for the defendants.

JAN. 24, 1883.

U. S. v. Brady et al.

A. W. Moore was cross-examined on the part of the defendants. John W. Major was recalled by the Government and cross-examined by the counsel for the defendants. On his examination he was questioned as to what Moore, the former witness, said to him when making the sub-contract under consideration. Objected to by the defendants; the court admitted the question. The cross-examination of A. S. Powers was resumed.

JAN. 25, 1883.

U. S. v. Brady et al.

A. S. Powers resumed the stand. A. E. Boone testified for the Government. He was asked what he did under an arrangement with Dorsey, one of the defendants. Objection was made to its admission on account of the time of the occurrence. Justice Wylie ruled that any conversation showing the common interest of these parties would be admissible. The prosecution proposed to read certain letters that had been identified. Objected to on the ground that they had nothing to do with the case. Objection overruled and the letters read.

JAN. 26, 1883.

U. S. v. Brady et al.

A. E. Boone was the only witness examined by

the prosecution and cross-examined by the defense.

JAN. 29, 1883.

U. S. v. Dorsey et al.

A. E. Boone was cross-examined for the defense, and re-examined by the prosecution. Wm. M. Krider and Frank McBean were examined.

JAN. 30, 1883.

U. S. v. Dorsey et al.

Frank McBean was examined on the part of the Government. The court decided that the witness could be examined as to certain representations made to him by a Mr. Moore. John J. Callahan and Geo. M. Sweeney identified papers. Paul Wright testified as to the weight of the mail.

JAN. 31, 1883.

U. S. v. Dorsey et al.

John M. Fisk testified to conversation he had with Moore in relation to increase of service. Joseph P. Masterson testified as to the manner in which he performed the service.

## The Courts.

**CIRCUIT COURT.—New Suits at Law.**

FEB. 1, 1883.

24213. Nunan & Wall v. John T. Sullivan. Judgment of Justice Hall, \$86. Piffs atty, F. E. Alexander.

24214. William W. Hicks v. The Graphic Co. Libel, \$35,000. Piffs attys, Culver, Orittenden and Mackey.

24215. Same v. The Evening Star Publishing Co. Libel, \$35,000. Piffs attys, same.

FEB. 6, 1883.

24216. Joanna B. Langhorne v. Samuel T. Luckett. Replevin. Piffs atty, Wm. J. Miller.

FEB. 7, 1883.

24217. Wm. Mayse & Co. v. Moses B. C. Wright et al. Note, \$100. Piffs atty, H. B. Moulton.

24218. E. E. White v. Jas. W. Pumphrey. Account, \$472.84. Piffs attys, Carusi, Miller & Sands.

24219. Anmour & Co. v. Jas. A. Hoffman. Account, \$232.32. Piffs attys, Carusi, Miller & Sands.

24220. Jos. W. O. Seavey et al. v. O. Damman. Account, \$233.50. Piffs atty, H. W. Garnett.

**IN EQUITY.—New Suits.**

JAN. 31, 1883.

2441. Parris Walker et al. v. William L. Kimmell et al. For an account and sale. Com. sol., I. G. Kimball.

FEB. 2, 1883.

2442. Edward L. Palmer et al. v. Henry O. Bowers et al. Creditors' bill. Com. sol., R. W. McPherson.

2443. Annie E. Libby v. Walter E. Libby. For divorce. Com. sol., S. R. Bond.

FEB. 5, 1883.

2444. Margaret Conlon et al. v. District of Columbia et al. For injunction. Com. sol., F. T. Browning.

2445. Henry K. Willard v. Joseph O. Willard. For partition. Com. sols., Cook & Cole.

FEB. 6, 1883.

2446. Chas. G. Godfrey v. Olafson McMichael et al. Injunction. Com. sol., J. A. Clarke.

**Legal Notices.****THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Frederick A. Fill, late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

HENRY WISE GARNETT,  
Administrator c. t. a.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding an Equity Court.

LEOPOLD NEUMEYER

No. 8,139. Equity.

**JOHN NEUMEYER ET AL.**  
Ordered by the court, on this 24th day of January, A. D. 1883, that the sales made and reported by Leopold Neumeyer, trustee, for the sale of the real estate of Christopher Neumeyer, deceased, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of February next. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before the 26th day of February, A. D. 1883. The report states the amount of sales to be \$8,899.44.

By the Court.  
A true copy.

**CHARLES P. JAMES, Justice.**  
Test: 63 **R. J. Meigs, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. February 2, 1883.

In the matter of the Will of Sarah Hammond, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Edward H. Thomas.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: 63 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. February 5, 1883.

In the matter of the Will of Margaret Ann Randall, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Thomas I. Hall, of Baltimore, Md.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**WM. F. MATTINGLY, Solicitor.** 63

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. Tuesday, February 6, 1883.

In the case of James W. Orme and Joseph Libbey, Executors of William Orme, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 3d day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 63 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, Sitting in Equity, February 7, 1883.**JAMES CHASE AULD ET AL.**

In Eq. No. 7918 Doc. 21.

**Laura S. H. Cooke et al.**  
On motion of the plaintiffs, by Francis Miller, their attorney, it is ordered that the defendants, Kate Chase Sprague and Nellie Chase Hoyt, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true copy. Test: 63 **R. J. Meigs, Clerk.**

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of Washington City, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John P. Oratchet, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1883.

**AMAS M. JUDSON, Administrator w. a. c.**  
**CHARLES A. WALTER, Solicitor.** 63

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Josephine Meeker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

63 **JAMES R. YOUNG, Administrator.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. February 2, 1883.

In the case of John F. Hanna, Administrator, c. t. a., of Felix Barotti, deceased, the Administrator, c. t. a., aforesaid has, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator, c. t. a., will take the benefit of the law against them: Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 63 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans'  
Court Business. February 2, 1883.

In the case of Rufus K. Heiphenstine, Administrator of Susanna V. Walker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 2d day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: 63 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of February, 1883.

**SIMON DEALHAM, Plaintiff** } No. 24,118. Law Docket.  
**v.**  
**SOLOMON MARCUS, Defendant.**

On motion of the plaintiff, by Messrs. H. O. & R. Oughton, his attorneys, it is ordered that the defendant, Solomon Marcus, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **MAC ARTHUR, Justice.**  
True copy. Test: 63 **R. J. Meigs, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**WILLIAM P. YOUNG** } No. 7,597. Eq. Doc. 21.  
**v.**  
**ELIZABETH H. GALE ET AL.**

Ordered, this 6th day of February, 1883, that the sale of No. 215 B street, northwest, east 23 feet of lot 4, reservation eleven, in the city of Washington, this day reported in this cause by William A. Meloy, trustee, at \$1,500, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of March, A. D. 1883. Provided, a copy of this order be published three times in the Washington Law Reporter prior to said day.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 63 **R. J. Meigs, Clerk.**



*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of February, 1883.

PARRIS WALKER ET AL.,

No. 8,441. Equity Docket 23.

Wm. L. KIMMELL.

On motion of the plaintiffs, by Mr. Kimball, their solicitor, it is ordered that the defendants, William L. Kimmell, Andrew J. Kimmell and Frank Kimmell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
True copy. Test: 6-3 R. J. MILES, Clerk, &c.

**THIS IS TO GIVE NOTICE.**

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas Harper, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1883.

6-3 LETTIE MARKES HARPER, Executrix.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, February 2, 1883.

In the matter of the Will of Hugh Kandler, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lisette Candler.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of March next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: 6-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ann C. Carroll, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1883.

MARIA C. FITZHUGH, Executrix.  
GEO. F. APPLEBY, Solicitor. 5-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 30th day of January, 1883.

FRANCY LEE WATERS, by next friend,

No. 8233. Eq. Doc. 22.

JOSEPH G. WATERS ET AL.

On motion of the plaintiff, by Messrs. Saville and Fendall, his solicitors, it is ordered that the defendants, Isabella Weisel and Daniel Weisel, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 5-3 R. J. MILES, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, January 30, 1883.

In the matter of the Will of Noble Johnson, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Noble Johnson.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
GEO. F. GRAHAM, Solicitor. 6-3

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ernest Dickas, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

5-3 ANNIE HEBSACKER, Executrix.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of New York City, N. Y., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. Hassall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

FREDERICK E. FALOONER, Executor.  
JNO. F. ENNIS, Solicitor. 6-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eliza L. Glover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1883.

5-3 SAM'L. C. MILLS, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Margaret Burke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

JEREMIAH O'SULLIVAN, Administrator.  
HANNA & JOHNSTON, Solicitors. 6-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, January 19, 1883.

In the matter of the Estate of William V. Orandall, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Parley H. Eaton, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 9th day of February next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
A. K. BROWNE, Solicitor. 4-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louis Neurath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.

OATHARINE E. NEURATH, Executrix.  
HINE & THOMAS, Solicitors. 4-3



## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William I. Dyer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1883.

JOSEPH E. DYER, Administrator.

F. W. JONES, Solicitor.

4-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. January 19, 1883.**

In the matter of the Estate of James F. Meguire, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Lewis S. Wells, of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of February next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

HINE & THOMAS, Solicitors.

4-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ANNIE M. SHOEMAKER ET AL }

No 8124. In Equity.

AGNES CAMPBELL ET AL. }

Francis Miller and E. Ross Perry, the trustees herein, having reported the sale of the property mentioned and described in the bill of complaint to the Metropolitan Railroad Company, at and for the sum of \$2,700, and the compliance of said company with the terms of sale:

It is, this 12th day of January, 1883, by the court, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of February, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three (3), successive weeks before said 13th day of February, 1883.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy. Test: 4-8 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of January, 1883.**

CATHARINE OURAND }

No. 8425. Equity Docket, 22.

GEORGE E. OURAND ET AL. }

On motion of the plaintiff, by Messrs. Appleby & Edmonston, her solicitors, it is ordered that the defendant, John M. Riggs, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy. Test: 4-3 E. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Perry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of January, 1883.

4-3

WALTER S. PERRY, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary A. Pearce, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1882.

4-3

WM. H. PEARCE, Administrator.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rebecca T. Tompkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1883.

JOHN BECK, Administrator.

W. W. BOARMAN, Solicitor.

4-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles H. Morse, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1883.

LAURA A. MORSE.

GEO. F. APFLEBY, Solicitor.

4-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Gebhard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1883.

4-3

GEORGE GERHARD, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of January, 1883.**

LORIN M. SAUNDERS }

No. 8,420. Equity Docket, 22.

SAYLES J. BOWEN ET AL. }

On motion of the plaintiff, by Mr. Daniel O'O. Callaghan, his solicitor, it is ordered that the defendants, George E. Herrick, trustee, and Augusta V. Pfeiffer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

A. B. HAGNER, Justice.

True copy. Test:

4-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

VIRGINIA TAYLOR }

8,226. Eq. Doc. 22.

H. A. TAYLOR ET AL. }

Upon coming in of the trustee's report made herein this day, relating to the sale of a certain pew, and upon motion of the trustee herein, it is, by the court, this 18th day of January, A. D. 1883, ordered, adjudged and decreed, that the sale of said pew to James M. Johnston as reported by the trustee be and the same is hereby in all things confirmed unless cause to the contrary be shown on or before the 18th day of February, A. D. 1883. Provided, also that a copy of this order be published in the Washington Law Reporter for three successive weeks before the last named day.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy. Test:

4-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES A. LANGLEY }

No. 8,308. In Equity.

ELIZA FERRY ET AL. }

On motion of the solicitor for plaintiff, it is, ordered by the court this 20th day of January, 1883, that the sale made by the trustee in this cause of the real estate in the proceedings mentioned, known as part of lots 11 and 12, in Davidson's sub-division of square No. 216, in the city of Washington, and by said trustee reported to this court, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 20th day of February, 1883. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said 20th day of February, 1883.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy. Test:

4-3 E. J. MEIGS, Clerk.

# Washington Law Reporter

WASHINGTON . . . . . February 17, 1883

GEORGE B. CORKHILL . . . . . EDITOR

## The Desire to Avoid Jury Duty.

The disinclination of certain classes of citizens to serve on juries, is one of the noticeable features of the proceedings of the circuit and criminal courts; the desire of almost every person summoned as a juror, who has some settled avocation or business pursuit, to escape the performance of jury duty, is made evident through the earnestness of their efforts to be excused from the service. The liberality of the court in passing upon the various reasons adducted in their behalf, has in the past deprived the community of the services of some of the best citizens in this important public function.

The evil is not confined to the District of Columbia, but is general. Within a few days, facts have been brought to light in the city of New York, from which it appears that persons eligible for jury service in that city have been enabled to escape from the performance of it, by illegally paying certain sums to those entrusted by law with the duty of preparing jury lists.

The *Daily Register*, the legal paper of that city, congratulates the public upon the discovery, and indulges in some observations on the subject which have more than a local application. It says:

"The animadversions of theorists against the jury system have no more efficient support than is afforded by the habitual disposition of intelligent citizens to evade their share of the duty. The corruption which has been going on in the matter is worse than any ordinary official extortion; for it has been not merely a corruption of officers, but the cause of degeneracy in the chief instrument of justice. The virtue of the jury system is dependent on the extent to which its functions are distributed through the community and the universality of the service. All classes of citizens ought to be thus brought in turn into the courts, and to sit there interested though impartial spectators of the manner in which judges, attorneys and officers conduct them-

selves and perform their duties. The bar cannot afford to lose the inspection which throughout the State is thus given to judicial proceedings; nor can the State itself afford to lose the effect of this constant presence, to say nothing of the service of the jurors in determining particular causes as they arise. The jury is the window through which the country looks in upon her courts; and every citizen not exempt by law should be compelled in turn to take his share of this double duty.

"Those who pay illegally to get off should be admonished in some effectual way that such evasion is a wrong to others upon whom double duty is thrown, a threat to the administration of justice itself, and a contempt of the court whose summons is thus met with bribery."

Our courts have recently exercised greater circumspection in excusing those summoned and the result has been greater respectability and intelligence in the jury box.

## Mailing Notice of Protest.

In the case of *Pearce v. Langfitt*, the Supreme Court of Pennsylvania had under consideration the question of the sufficiency of proof of delivery to a letter carrier of notice of protest, to bind an endorser of a promissory note, where its receipt was denied by the endorser.

The facts were that Barnhart made a promissory note, dated at New York, payable to the order of Austin Pearce in ninety days, at the Ninth National Bank of New York. This note was endorsed by the payee, then by Zeigler, then by John Pearce, the plaintiff in error, then by Latcham, then by Langfitt, the defendant in error. It was discounted by the payee at the People's Savings Bank of Allegheny City, Pa., and was by the New York correspondent of that bank, presented on the day of its maturity to the Ninth National Bank for payment, and payment was refused; whereupon it was duly protested for non-payment, and the note, protest and notice of protest were forwarded by mail to the Savings Bank, and were received by its cashier.

On the day of their receipt the notice of protest for John Pearce was enclosed in an envelope, upon which was written his proper post-office address, and the envelope was

sealed and duly stamped. When the letter carrier came to the bank to deliver its mail it was handed to him for mailing. Pearce denied that he ever received it.

The note was paid by Langfitt, the last endorser, who brought assumpsit against Pearce the prior endorser; the court below held this proof of the mailing of the notice of protest to be sufficient to bind the endorser whether he received the notice or not and this ruling was assigned as error.

The opinion of the appellate court was delivered by Green J. (13 Pitts. Leg. Jour., No. 27), affirming the judgment below, holding that the delivery of a letter to an official letter carrier was the full equivalent for depositing it in a receiving box, or at the post office: that in either case it came into the personal custody of some one lawfully authorized for the purpose, whose function it was to participate in the transmission of it from the sender to the mail, citing *Skilbeck v. Garbett*, 7 A. & E. (N. S.), 846, in which Lord Denman said: "If a public servant belonging to the post-office takes charge of the letter, in the exercise of his public duty, it is the same as if it were carried to the office."

WHERE a life insurance company has contracted with a person to act as its general agent, for a stipulated number of years, at a specified yearly salary, and the company becomes insolvent and passes into the hands of a receiver, and is also dissolved by the action of the State, before the expiration of the term for which such agent was hired, such agent has no legal right to recover from the fund in the hands of the receiver the salary fixed by the agreement, for the unexpired term of service, as damages for not continuing the employment; the contract having ended with the corporate dissolution by action of the State, and there is no valid claim for damages for an alleged breach of the agreement by the company. *People v. Globe Mutual L. Ins. Co.* N. Y. Ct. of App.

IN an action for malicious prosecution, where the testimony shows that the object of the criminal proceedings was not to vindicate the law and punish crime, but to coerce the payment of a debt, a malicious motive may be inferred.—*Ross v. Langworthy*, S. C. Neb., Dec. 30, 1882; 14 N. W. Rep., 515.

## Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

WILLIAMS ET AL. v. GARDINER ET AL.

In Equity. No. 1226.

1. Where on appeal the court in general term remands a case to the special term, a bill to review the decree entered in obedience thereto cannot be entertained by the special term. But where the decree of the general term extends to part only of the decree appealed from, the special term may entertain a bill to review so much of its own decree as was not affected by the decree of the appellate court.

THE CASE is stated in the opinion.

WORTHINGTON & HEALD for plaintiff.

BIRNEY & BIRNEY for defendant.

Mr. Justice JAMES delivered the opinion of the court.

This case is heard on demurrer to a bill of review. The original suit was for partition and an account of rents. The auditor found that Wise, one of the tenants in common, had occupied a part of the premises to the exclusion of his co-tenants, and charged him for use and occupation at a certain annual rate; in a separate schedule he allowed interest on these rents with annual rests. Exceptions were taken separately to these charges, and were sustained by the court in special term. On appeal to the general term the decree was reversed as to the exception to the charge for use and occupation, but nothing was said as to the charge for interest. The effect of the decree here was to allow the charge for use and occupation, and, by not reversing as to the other exception, to disallow the charge for interest. When the case was remanded, it was referred to a special auditor, who construed the decree of this court as allowing both charges, and upon his report decree was made accordingly. The bill of review attacks this decree and claims that both charges were erroneous.

As this bill was brought in the special term, and the decree, so far as it related to the rents, was made there in obedience to the decree of the general term, the question arises, whether it is subject to review there.

The Supreme Court of the United States has held that when that court directs, on appeal, what decree shall be made by the circuit court, and such a decree is accordingly made there, a bill to review that decree cannot be sustained in the circuit court; since the matter to be reviewed was really the action of the Supreme Court. It was contended, however,

that this court, whether sitting in general or special term, is a unit; in other words, it is in both cases known only as the Supreme Court of the District of Columbia, and that the rule just referred to does not apply here. It is not worth while to discuss the question whether the Supreme Court of the District of Columbia may be regarded as consisting of several courts. It is enough that the law has provided a system of appeals from the court as held by one of the judges to the court as held in general term. The action of the special term is subject to be reversed, and to be directed by the general term on the appeal, and the same rule must be applied to the powers of the former which is applied to the powers of a circuit court. Both make their decrees in obedience to a superior decree, and neither can review a decree so far as it is so made.

In the present case the special term decreed for a gross sum, but that sum covered both the rents and interest thereon. As to the first of these charges, it acted only to carry out the directions of the general term, and cannot review the propriety of the action so taken. It was competent, however, to review its own action in allowing interest, since that part of its decree was not authorized or directed by this court, and such a proceeding would not involve a review of the decision of this court.

We observe that this demurrer is to the whole bill. As it is good only as to a part, it must fail altogether; but where a demurrer is too extensive, the court may grant leave to amend by narrowing its terms. The defendant has leave to do so in this case.

The demurrer was amended accordingly, and a decree was rendered for the sum remaining after deducting interest on the rents.

## United States Supreme Court.

No. 1,033.—OCTOBER TERM, 1892.

CHARLES H. VAN WYCK, Appellant,

v.

SHERMAN W. KNEVALS.

*Appeal from the Circuit Court of the United States for the District of Nebraska.*

Mr. Justice FIELD delivered the opinion of the Court:

The principal question for determination in this case is, when does the grant made to Kansas by the act of Congress of the 23d of July, 1866, for the use and benefit of the St. Joseph and Denver Railroad Company in the construction of a railroad from Elwood, in

that State, to its junction with the Union Pacific Railroad, or a branch thereof, take effect so as to cut off the right of pre-emption from subsequent settlers on the land? The grant is similar in its main features to numerous other grants of land made by Congress in aid of railroads, and contains the same limitations, or rather exceptions to it. It differs from some of the grants in that it is made to the State, and not directly to the company to be benefitted. The act of Congress, however, provides, notwithstanding the designation of the State as grantee, that patents for the land shall be issued directly to the company upon the completion of every ten consecutive miles of the road. The grant is of ten alternate sections, designated by odd numbers, on each side of the proposed road, subject to the condition that if it appear, when the route of the road is "definitely fixed," that the United States have sold any section or a part thereof, or the right of pre-emption or homestead settlement has attached, or the same has been reserved by the United States for any purpose, the Secretary of the Interior shall cause an equal quantity of other lands to be selected from odd sections nearest those designated in lieu of the lands appropriated, which shall be held by the State for the same purpose. The grant is one in *presenti*, except as its operation is affected by that condition; that is, it imports the transfer, subject to the limitations mentioned, of a present interest in the lands designated. The difficulty in immediately giving full operation to it arises from the fact that the sections designated as granted are incapable of identification until the route of the road is "definitely fixed." When that route is thus established the grant takes effect upon the sections by relation as of the date of the act of Congress. In that sense we say that the grant is one in *presenti*. It cuts off all claims, other than those mentioned, to any portion of the lands from the date of the act, and passes the title as fully as though the sections had then been capable of identification. Nor is this operation of the grant affected by the fact that patents of the United States are subsequently, upon the certificate of the governor, to be issued by the Secretary of the Interior directly to the company and not to the State. This is only a mode of divesting the State of her trust character and of passing the legal title held by her to the party for whose benefit the grant was made. The legal title under the grant goes to the State, but the equitable right vests in the company. The State cannot dispose of the lands; she simply holds them for the use and benefit of the company, the act of Congress

providing how her trust shall be discharged and the legal title be conveyed to the company. The act says that the land granted "shall inure to the benefit of the said company as follows," and then proceeds to declare that when the governor of the State shall certify that a section of the road of ten consecutive miles is completed "in a good, substantial and permanent manner as a first-class railroad," the Secretary of the Interior shall issue to the company patents for the sections of land granted which lie opposite to and coterminous with the completed road, and that similar patents shall issue upon a like certificate upon the completion of every successive section of ten miles. It matters not, so far as subsequent settlers are concerned, in what manner the title, which has passed out of the United States, is transferred to the company from the State. When the route of the road is "definitely fixed," no parties can subsequently acquire a pre-emption right to any portion of the lands covered by the grant. The right of the State and of the company is thenceforth perfect as against subsequent claimants under the United States.

The inquiry then arises, when is the route of the road to be considered as "definitely fixed" so that the grant attaches to the adjoining sections? The complainant in the court below, who derives his title from the company, contends that the route is definitely fixed, within the meaning of the act of Congress, when the company files with the Secretary of the Interior a map of its lines, approved by its directors, designating the route of the proposed road. On the other hand, the defendant—the appellant here—who acquired his interest by subsequent settlement on the lands and a patent therefor, contends that the route cannot be deemed definitely fixed, so that the grant attaches to any particular sections and cuts off the right of settlement thereon, until the lands are withdrawn from market by order of the Secretary of the Interior, and notice of the order of withdrawal is communicated to the local land officers in the districts in which the lands are situated.

We are of opinion that the position of the complainant is the correct one. The route must be considered as "definitely fixed" when it has ceased to be the subject of change at the volition of the company. Until the map is filed with the Secretary of the Interior the company is at liberty to adopt such a route as it may deem best, after an examination of the ground has disclosed the feasibility and advantages of different lines. But when a route is adopted by the company and a map designating it is filed with the Secre-

tary of the Interior and accepted by that officer, the route is established; it is, in the language of the act, "definitely fixed," and cannot be the subject of future change, so as to affect the grant, except upon legislative consent. No further action is required of the company to establish the route. It then becomes the duty of the Secretary to withdraw the lands granted from market. But if he should neglect this duty, the neglect would not impair the rights of the company, however prejudicial it might prove to others. Its rights are not made dependent upon the issue of the Secretary's order, or upon notice of the withdrawal being given to the local land officers. Congress, which possesses the absolute power of alienation of the public lands, has prescribed the period at which other parties than the grantee named shall have the privilege of acquiring a right to portions of the lands specified, and neither the Secretary nor any other officer of the Land Department can extend the period by requiring something to be done subsequently, and until done, continuing the right of parties to settle on the lands as previously. Otherwise, it would be in their power, by vexatious or dilatory proceedings, to defeat the act of Congress, or at least seriously impair its benefit. Parties learning of the route established—and they would not fail to know it—might, between the filing of the map and the notice to the local land officers, take up the most valuable portions of the lands. Nearness to the proposed road would add to the value of the sections and lead to a general settlement upon them.

This view of the law disposes of the claim of the defendant. A map designating the route of the proposed road, made by the engineers of the company after careful surveys, and adopted by its directors, was filed on the 25th of March, 1870, with the Secretary of the Interior, who accepted it, and on the 28th of that month transmitted it to the Commissioner of the General Land Office, with directions to instruct the proper local officers to withhold from sale, or other disposition, the odd-numbered sections within the limits of twenty miles on each side of the route. On the 8th of April following, the commissioner forwarded a copy of the map to the register and receiver of the land office at Beatrice, in Nebraska, but it was not received by them until the 15th of that month. On the 13th the defendant entered at that office the land in question, at private entry, and paid the government price therefor. In November of the following year a patent for it was issued to him. His entry, as thus seen, was after the map

had been filed and the route "definitely fixed," and the grant had attached to the adjoining odd sections. It could, therefore, initiate no rights to the land, and the subsequent patent issued upon that entry conferred no valid title to the defendant as against the company or parties claiming under it.

The defendant having failed to establish the validity of his own title, attacks the right of the company to the lands covered by the grant, alleging that the company never completed the construction of the entire road for which the grant was made; that after filing its map with the Secretary of the Interior it changed, for part of the distance, the route of the road, and that it never complied with the conditions of the laws of Nebraska for the extension of its road within the limits of that State.

We do not deem these objections, when considered with the facts on which they are based, as having any force. There is to them a ready and conclusive answer. Assuming that the Burlington and Missouri River Railroad, with which the company's road connected, was not, as averred by the complainant, a branch of the Union Pacific Railroad, and that, therefore, the company's proposed road was not entirely completed, the fact remains that the company constructed a portion of the proposed road, and that portion was accepted as completed in the manner required by the act of Congress. Patents for some of the adjoining sections were accordingly issued to the company, and a right to all of them, not specially reserved by the condition of the grant, vested in it. So far as that portion of the road which was completed and accepted is concerned, the contract of the company was executed, and as to the lands patented, the transaction on the part of the government was closed and the title of the company perfected. The right of the company to the remaining odd-numbered sections adjoining the road completed and accepted, not reserved, is equally clear. If the whole of the proposed road has not been completed, any forfeiture consequent thereon can be asserted only by the grantor, the United States, through judicial proceedings, or through the action of Congress. (*Schulenberg v. Harriman*, 21 Wall., 45.) A third party cannot take upon himself to enforce conditions attached to the grant when the government does not complain of their breach. The holder of an invalid title does not strengthen his position by showing how badly the government has been treated with respect to the property.

As to the alleged deviation of the road constructed from the route laid down in the map,

admitting such to be the fact, the defendant is in no position to complain of it; the lands in controversy are within the required limit, whether that be measured from one line or the other. A deviation of the route without the consent of Congress, so as to take the road beyond the lands granted, might, perhaps, raise the question whether the grant was not abandoned, but no such question is here presented. The deviation within the limits of the granted lands in no way infringed upon any rights of the defendant.

As to the want of compliance with the conditions imposed by the laws of Nebraska, allowing railroad companies organized in other States to extend and build their roads within its limits, it is sufficient to say that when the grant was made to the company Nebraska was a territory, and it was entirely competent for Congress to confer upon a corporation of any State the right to construct a road within any of the territories of the United States. The grant of land and a right of way for the construction of a road to a designated point within the territory, was sufficient authority for the company to construct the road to that point. It may be well doubted whether the state subsequently created out of the territory could put any impediment upon the enjoyment of the right thus conferred. As we said in *Railroad v. Baldwin*, "it could do so only on the same terms that it could refuse a recognition of its own previously granted right, for in such matters the State would succeed only to the authority of Congress over the territory." (103 U. S., 428.) It does not appear, from anything before us, that the State has ever attempted to interfere with the road or the company for its delay in filing its articles of incorporation with the Secretary of State, or in complying with other provisions of law. And it hardly need be added that any such interference would not operate to divest the company of its title to lands granted by the United States.

It follows from what we have said, that when the defendant made his entry of the lands in controversy, and obtained a patent therefor, the title had passed from the United States, and consequently no right could be conferred upon him. Still the patent gave color of title, and because of its issue the officers of the Land Department have refused to give a patent to the company embracing the land, holding, as may be inferred, the view for which the defendant contends, that his right to acquire a pre-emptive right by settlement continued until notice of the order of the Secretary directing the withdrawal of the lands from market was received by the local land

officers. The existence of the patent, therefore, embarrasses the assertion of the complainant's rights; that is, it prevents him from obtaining a strictly legal title which would enable him to recover possession of the premises by an action at law. The existence of the patent also creates a cloud upon the title of land. Every instrument purporting by its terms to convey land from the original source of title, however invalid, creates a cloud upon the title, if it require extrinsic evidence to show its invalidity. (*Pixley v. Huggins*, 15 Cal., 128.)

The existence of the patent therefore, under these circumstances, furnishes ground for equitable relief. That relief, however, should properly be limited to a decree declaring the equity of the complainant, the invalidity of the title of the defendant, and enjoining him from the assertion of any claim to the property under the patent; but inasmuch as no objection is taken to the form of the decree as entered, which requires the defendant to execute a conveyance of the premises to the complainant, and as the execution of such a conveyance, amounting in fact to a release of his claim to the property, will accomplish all that could be legally effected, it is not considered necessary to order a modification of it. The decree is accordingly affirmed.

**Premissory Notes—Rate of Interest on Note after due, and on Judgment till paid.**

**HAMILTON & ROSSVILLE HYDRAULIC Co. vs. CHATFIELD ET AL.**

*Error to the District Court of Butler County, January 23, 1883.*

While the act of March 14, 1850, allowing parties to contract for a rate of interest not exceeding ten per cent, was in force, the plaintiff in error, issued and sold bonds in the following form:

"The Hamilton and Hydraulic Company acknowledge themselves to owe John H. Shuey or bearer five hundred dollars, which sum they promise to pay to the holder hereof at their office in the city of Hamilton, Ohio, on the first day of February, 1869, and also interest thereon at the rate of ten per cent, per annum, semi-annually, on the first day of each August and February ensuing the date thereof, until the principal sum shall be paid on the presentation of the annexed interest warrants at their said office, and the said company further agree that this obligation may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand."

The defendants in error purchased some of these bonds after the interest warrants had been detached.

**Held:** 1. That these bonds contain a stipulation for the payment of interest on the principal sum at the rate of ten per cent.

2. That after they become due they bear the agreed rate until paid, or until judgment thereon, and the judgment, will under the statute, bear the same rate of interest. *Monett v. Sturges*, 25 Ohio St., 384, and *Marietta Iron Works v. Jattimer*. *Ibid.*, 621, approved and followed, *Muller & Grogrove v. McGregor*, 28 Ohio St., 263, distinguished.

The plaintiff in error, on the first day of February, 1859, issued and sold one hundred bonds of \$500 each, secured by mortgage on its property. Each of these bonds was in the terms following:

"STOCKHOLDERS INDIVIDUALLY LIABLE.

"\$500. "THE STATE OF OHIO.

"The Hamilton and Rossville Hydraulic Company acknowledge themselves to owe John H. Shuey, or bearer, five hundred dollars, which sum they promise to pay to the holder hereof at their office in the city of Hamilton, Ohio, on the first day of February, 1869, and also interest thereon at the rate of ten per cent. per annum, semi-annually, on the first day of each August and February ensuing the date hereof, until the principal sum shall be paid, on the presentation of the annexed interest warrants at their said office, and the said company further agree that this obligation may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand."

Chatfield and Woods, the owners of sixty of these bonds, brought suit thereon, and to foreclose the mortgage. Their petition contains the usual allegations, with statement of payments made since the bonds became due, and a prayer for an ascertainment of the amount due, also for foreclosure and for general relief.

The answer discloses the fact that when Chatfield and Woods purchased these bonds, the interest warrants belonging thereto, had been detached and were never owned by them. Their right rests upon the terms of the bond unaided by the interest warrants.

On final hearing it was adjudged that Chatfield and Woods recover: "The amount due to them upon the bonds set forth in the petition, with interest at ten per cent. per annum, upon the principal thereof, and six per centum on the interest accrued and unpaid thereon, amounting to the sum of forty thousand two hundred and seventy-three dollars and eighty-seven cents, upon the first day of the present term, after crediting all the payments thereon, including such as have been made since the commencement of this action."

And the decree contained these words:

"It is the true intent and meaning of this decree that the same shall bear interest at the rate of ten per centum per annum."



This judgment was affirmed in the district court; and to reverse the same, it is here assigned: First, the court erred in computing and allowing interest on said bonds *after maturity*, at ten per cent.; second, it erred in allowing six per cent. on accrued interest *after maturity*.:

JOHNSON, J.

1. The act of March 14, 1850, (2 Curwen, 1659), under which these bonds were issued and sold, reads as follows:

"SEC. 1. That the parties to any bond, bill, promissory note or other instrument of writing, for the payment or forbearance of money, may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument, at any rate not exceeding ten per centum yearly.

SEC. 2. That upon all judgments or decrees rendered upon any bond, bill, or promissory note, or other instrument aforesaid, interest shall be computed until payment at the rate specified in such bond, bill, note or other instrument, not exceeding ten per centum, as aforesaid, or in case no rate of interest be specified, at six per centum yearly."

Chatfield and Woods purchased these bonds with the interest warrants or coupons detached. These coupons related to the semi-annual instalments of interest, payable before the bonds became due. As these were never owned by Chatfield and Woods, they were entitled to interest on the bonds they owned after they matured, *i. e.* after February 1, 1869. The question is, at what rates is it the legal rate, as when there is no stipulation for a greater rate not exceeding ten per cent. or is it for the greater rate?

Assuming that these bonds are silent as to the rate of interest they shall bear, *after maturity*, yet if they contain a stipulation for ten per cent. before maturity, then the principal *after maturing* until payment, and the judgment thereon, will bear ten per cent. interest. *Monett v. Sturges*, 25 Ohio St., 384; *The Marietta I. Works v. Lattimer*, 25 O. St., 681.

These decisions rest upon the terms of the act of 1850. It is true they are not in harmony with the construction placed upon certain statutes by the Supreme Court of the United States. In the latest of these, *Holden v. Trust Company*, 100 U. S., 72, which arose under the law in force in the District of Columbia, after citing the cases where that court has decided, that when the instrument contains no stipulation as to the rate *after maturity*, the legal rate governs, it is said, "where a different rule has been established it governs of course, in that locality. The question is always one of local law."

The rule adopted in these cases is, that where the agreement extends no farther than to the time fixed for the payment of the principal, then upon default of payment, the legal rate of interest is allowed as damages. It is said, that if the parties intended a higher rate *after due*, it would have been easy to say so.

In *Monett v. Sturgess*, it was held, under the act of 1850, that a note payable at a future day "with interest from date at ten per cent.," carried the agreed rate *after due*, as well as *before due*. The same rule was adhered to in *The Marietta Iron Works v. Lattimer*, 25 Ohio St., 621, under the eight per cent. law of 1869.

In *Samyn v. Phillips*, 15 Ohio St., 218, there was a loan of money, payable at a future day, to bear interest at ten per cent., payable quarterly, and separate notes were taken, one for the principal due at the time agreed on, and sundry interest notes for the interest accruing up to maturity of the loan, but there was no stipulation in either of the notes for any rate of interest *before* or *after* the maturity of the debt. It was held, that as there was no stipulation as to the special rate of interest contained in the notes, interest could only be computed *after maturity* at six per cent?

In view of the foregoing decisions, the question here presented is, do these bonds contain a stipulation for ten per cent.

If they do, that rate governs, although the bond is silent as to the rate *after due*. It is not necessary that this stipulation should in terms apply *after due*, if it is expressly agreed in the instrument that up to maturity it bears a higher rate, not exceeding ten per cent. That stipulation is sufficient to carry the same rate until paid. These bonds, in express terms, contain two stipulations: 1st, to pay the holder on the first of February, 1869, \$500; 2nd, "and also interest thereon at the rate of ten per centum per annum, semi-annually, on the first of August and February ensuing the date hereof, until the principal sum shall be paid, on the presentation of the annexed interest warrants." Here is an express promise to pay interest *before* the bonds become due at the special rate.

The manner in which this interest is to be paid, that is, on presentation of the annexed interest warrants, does not eliminate this express promise as to the rate from the body of the bond. These bonds contain a stipulation of the higher rate, "until the principal sum be paid on the presentation of the annexed interest warrants at their said office;" some of us think this is a stipulation for the payment of the higher rate *after maturity*, but as



suming that this is not so, still it cannot be denied that it is at least a clear and distinct stipulation in the bond, that up to the time the principal sum becomes due, the company agrees to pay interest at ten per cent. per annum, payable semi-annually. The promisor used this language, relating to interest, on the assumption that the principal would be paid at maturity; hence the stipulation as to the higher rate, in terms, related only to the same period, and the words, "on the presentation of the annexed interest warrants," related to the steps to be taken by the holder of the interest warrant to collect this semi-annual interest accruing before due. There being a stipulation in the bond for the special rate of interest before due, the principal sum bears a like rate after due, according to holding of this court in 25 Ohio St.

We are, however, asked to review and reverse the decisions in this court in *Monett v. Sturges and Marietta Iron Works v. Lattimer*, on the ground that *Mueller & Grogrove v. McGregors, Adams*, 28 Ohio St. 265, is said to have held differently, and to have followed the cases decided by the Supreme Court of the United States on this point. This is a misapprehension, which is apparent from a statement of facts in that case. There, Fortman, a mortgagor, sold real estate to Mueller & Grogrove, they assuming to pay certain notes to Dunlap, secured by mortgage, all of which were due September 1, 1855, and amounted, at that date, with unpaid interest, to \$11,340.05. In consideration of an extension of time by the mortgagee until September 1, 1856, the purchasers agreed in writing, with Dunlap and Fortman by a tripartite agreement, that they would pay interest on the amount due, (\$11,340.05), for that year at ten per cent., semi-annually, and gave their two notes to Dunlap for the amount of such interest. These notes were afterwards paid. It was expressly agreed that on payment of these interest notes for that year, there would be due on the mortgage notes, at the end of the extended time, said sum of \$11,340.05 and no more. The question was, did the debt, after September 1, 1856, bear six, or ten per cent.? If the face of the notes, held by Dunlap, was to determine the rate, then only six per cent. could be charged, but if the tripartite contract for forbearance, made by Mueller & Grogrove for the year ending September 1, 1856, operated as an agreement for the forbearance generally, then the principal would bear the higher rate after that date.

The construction placed upon this tripartite agreement was, that though a separate instrument from the notes and mortgage, it

was valid, but for one year only, and that, after the expiration of that year, the only stipulation as to interest, was that contained in the notes themselves. The case turned on the construction of the tripartite agreement, and it was held according to its manifest meaning, to be limited to the extended time and no longer; and that it did not change the obligation of the notes after that time, from six to ten per cent. Mueller and Grogrove had fully performed their special contract to pay ten per cent. for that year, and their further obligation rested upon their prior agreement to pay the notes which contained no stipulation as to a rate of interest.

2. The second error assigned is, that the court erred in allowing six per cent., interest on the semi-annual instruments of interest falling due after maturity of the bonds.

This error is not apparent on the record. The judgment entry seems to imply that such interest was allowed, but whether it was so in fact, depends upon a question of fact not disclosed.

On the 26th of September, 1877, the court ordered the receiver in charge to pay the plaintiffs below, \$7,000 on their claim, but whether it was in fact paid before final judgment, the record is silent. On the 15th of February, 1878, final judgment was rendered, finding for the plaintiff, \$40,273.87, "after crediting all payments therein, including such as have been made since the commencement of this action." Whether this \$7,000 was among these credits, we cannot assume.

The answer, which was filed September 26, 1877, made no claim for credits, other than those stated in the petition. We are therefore not called on to decide the question raised by this assignment, and express no opinion on the proper construction of these bonds in that respect.

Judgment affirmed.

**CONTRACT—Fraud—Concealment.**—Where a merchant is insolvent and has been, to use his own words, "Going down for several years," and of this fact he fails to advise the vendors at the time of his purchases and continues to buy on credit to keep his usual and ordinary stock, his omission to disclose his actual condition to his vendors is not a fraud for which the sales may be voided, or such bad faith as constitutes in law a fraudulent contracting of the debt if he did not purchase with the preconceived design not to pay therefor. *Kelsey v. Harrison*, S. C. Kan.

## Land Department.

Furnished by D. K. SICKELS.

### Settlements upon Unsurveyed Public Lands.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.  
WASHINGTON, Feb. 3, 1883.

REGISTER AND RECEIVER,  
Grand Forks, Dakota.

**GENTLEMEN:** I am in receipt of register's letter of 18th inst., requesting in view of the numerous settlements that are being made upon the unsurveyed lands in your district, and the differences of opinion existing among attorneys and others as to the rights of conflicting settlers upon such lands, a statement of the views and rulings of this office upon the subject for your own instruction and which you also propose to publish for the benefit of those now settled, and who may hereafter settle, upon unsurveyed lands.

Prefacing with the remark, that the determination of every case must largely depend upon its individual features, and that no general propositions or rules can therefore be laid down that will meet and control all cases, I will endeavor to set forth as requested the leading principles that will govern the adjudication of conflicting claims which had their inception prior to survey, as heretofore understood and enforced in the practice of this office.

Section 2274 of the Revised Statutes providing for joint entries in cases where the extension of the lines of survey find two or more settlers with improvements upon the same smallest legal subdivision, was remedial in its nature, and designed to meet a class of cases which, prior to the date of the act (March 3, 1873) from which it is taken, had been found extremely difficult to equitably adjust. Owing to ignorance of where the lines of survey would fall, settlers would be found in possession of, and with improvements upon, the same smallest legal subdivision, and although there was no conflict between them as to their *actual* possession, there would necessarily be a conflict in their claims as placed upon record. In such cases the provisions of section 2273, that the right of pre-emption should be in him who made the first settlement, was extremely inequitable and unjust, and this injustice was met and overcome by the act of March 3, 1873. (Sec. 2274.)

This section, it is obvious, is designed to meet only cases where the conflict arises from ignorance upon the part of the settlers

as to the extent of the other's claim; hence in the case stated by you, the prior settler "A" having distinctly marked the boundaries of his claim, so that no one could mistake its extent, was entitled to the whole thereof, and the subsequent settler "B" could acquire no right by asserting a claim in conflict with that location, or by making improvements within the boundaries of "A."

If, however, A's location instead of being in exact conformity with the lines of survey had excluded a portion of any legal subdivision, and B had settled and made improvements upon that portion of the subdivision outside of A's line, he is under the provisions of sec. 2274, entitled to a joint entry of such tract for an adjustment of coterminous boundaries.

The case stated is controlled by the fact that the prior settler had distinctly marked his boundaries, and it can make no difference that he had not, and that the subsequent settler had made improvements upon any particular subdivision *within* those boundaries.

In the case of *Caulfield v. Bosworth*, decided by the honorable Acting Secretary of the Interior, August 10, 1882, it was held that when a claim is located upon the ground before survey, either with Valentine scrip or under the pre-emption laws, and other claims are afterwards made and located with reference thereto, the party first locating and making known the extent of his claim will not be permitted to enlarge the same to the injury of subsequent locators whose claims have been made to conform to such first location. It would seem to follow that the first locator being bound by his established lines, subsequent locators are also bound by and cannot acquire rights within them. The right of joint entry can only accrue, therefore, when the boundary of the prior location *excludes* a portion of a legal subdivision.

In a case, however, where the prior settler does not mark the boundaries of his claim, priority of settlement does not control. In such a case, the subsequent settler who has, prior to survey, made improvements upon a subdivision upon which the prior settler also has improvements, is entitled to the benefits of Sec. 2274 Rev. Stats., and if he has improvements upon a subdivision embraced in the claim of a prior settler who, however, has no improvements thereon, and who has had possession of no portion thereof, he is entitled to the *whole* tract.

It would seem from the following language contained in your letter, viz.: "A goes upon unsurveyed land with the intention of taking 160 acres under the pre-emption or homestead law," that you consider homestead settlers

upon unsurveyed land as in exactly the same position as pre-emption settlers.

This view, of course, is based upon the provisions of the 3rd section, act of May 14, 1880.

I do not, however, think that such is the effect of that section. It protects homestead settlements upon surveyed or unsurveyed lands by providing that the settler may make his entry within the same time after settlement, or after the filing of the township plat, as is allowed pre-emptors to place their claims of record, and that his right shall relate back to the date of his settlement. In other words, it makes the provisions of sections 2265 and 2266 Rev. Stats., as regards the time allowed for perfecting entry in the district land office applicable to settlements under the homestead law as well as to those under the pre-emption law. It makes no provision for that class of cases where the survey finds two or more settlers with improvements upon the same subdivision, one or all of whom claim under the homestead law, and such settlers are in the same position as were pre-emption settlers prior to the act of March 3, 1873, (Sec. 2274). The provisions of this section cannot be applied to cases of settlement under the homestead law, for the reason that in addition to the fact that there is nothing in said act of May 14, 1880, that would justify it, the mode of procedure provided by it is one that cannot be applied in homestead cases.

This is true in cases of conflict between pre-emption and homestead settlements, particularly, owing to the great difference in the nature of the two claims. The pre-emptor must pay for the land; the homesteader pays nothing; the pre-emptor must make his proof and payment within thirty-three months from the filing of the plat; the homesteader after five years' residence. There are no features in the character of the respective entries by which they can be united.

It follows, therefore, that in cases of homestead settlement prior to survey the adjudication of conflicts will depend upon the facts in each case. If the homestead settler, prior to survey, can ascertain the lines of his claim and so mark his boundaries that they will conform to the lines of public survey when extended, then his entire claim could be protected by compliance with the law. In cases where no boundaries are marked, or if marked do not conform to the surveys, the rights of conflicting claimants to any particular subdivision must be determined by their priorities, possession, improvements, &c.; that is, by their apparent equities.

Very respectfully,

N. C. McFARLAND, *Comm'r.*

#### The Portable Electric Lighter.

The possibilities of Electricity are apparently boundless, and almost every day brings forth some new invention for its application to useful purposes. One of the latest of these is the PORTABLE ELECTRIC LIGHTER, which is now manufactured in this city, and which is exhibited at No. 22 Water Street. This is in effect a small chemical battery, occupying a space of five square inches and weighing but five pounds with all its fittings. By pressing upon a knob the current is produced, a strip of platinum is heated to incandescence and light instantaneous. This can be carried from room to room and placed upon the desk or the table. At a slight additional expense it can be so arranged as to ring an alarm or signal bell, or to light gas in any part of the house. The contrivance is novel, simple, convenient and cheap.—*Boston Courier*, Dec. 30.

### The Courts.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

##### GENERAL TERM.

Present, CARTER, C. J., and Justices COX and HAGNER.

FEB. 12, 1883.

Thomas Bannagan v. District of Columbia. Judgment of Special Term affirmed.

James H. Cohen v. Robert Cohen, executor, etc. Judgment reversed and cause remanded for new trial.

Samuel Strong v. Albert Grant. Judgment of Special Term affirmed.

William Neil v. Christian Heurich. Same.

Michael McCormick v. The Freedmans S. & T. Co. et al. Appeal to S. C. U. S. allowed.

Notice of application to fix appeal bond given in the consolidated equity cases, 6382, 6703, 7011.

Charles C. Duncanson v. Geo. W. Cissel et al. Argued and submitted.

U. S., ex rel. Key, petitioner, v. Frederick T. Frelinghuysen. Ordered that the rule to show cause as laid should stand in lieu of and be treated as an alternative mandamus, and issue as such to be issued.

FEB. 13, 1883.

Catharine Tierney v. Frank E. Corbett et al. Argued and submitted.

FEB. 14, 1883.

Frank A. Catharin, use of, &c., v. Eldred G. Davis. Motion to dismiss denied. Cause argued and submitted.

FEB. 15, 1883.

U. S., ex rel. Key, &c., v. Frederick T. Frelinghuysen. Re-ordered writ of mandamus to issue, returnable the 25th instant.

Thomas L. Hume et al. v. William J. Martin et al. Judgment of Special Term reversed and cause remanded for new trial.

Andrew Runstiller et al. v. James W. Atkinson et al. Relief denied and decree of the Special Term affirmed.

Cousino v. Strasburger. Appeal dismissed the order appealed from it, not being a final order.

Thomas E. Waggaman v. George H. Bartlett. Argued and submitted.

FEB. 16, 1883.

George Davis v. John Alexander. Motion to return attorney's fee denied. Court ruled that \$20 is the legal fee to be taxed instead of \$5.

Duncanson v. Cissell et al. Case settled. Appeal dismissed.

Henrietta S. Butler v. Leonidas Scott. Motion to dismiss appeal for non-compliance with rule 92.

Philip Phillips v. James S. Negley. Motion to dismiss appeal and remand. Submitted.

Kerngood et al. v. Gusdorff et al. Motion to dismiss appeal because order appealed from is not an appealable order.

**EQUITY COURT.—Justice James.**

FEB. 12, 1883.

Guntton v. Zantzing. Trustee directed to pay money.

Frederick v. Christiani. Testimony of non-resident witness ordered taken.

Carrick v. Carrick. Testimony before examiner ordered taken.

Chase v. Chase. Sale ordered and trustee appointed to sell.

Fisk et al. v. Auerbach et al. Time to take testimony extended.

Fisk et al. v. Tyssowski et al. Same.

Fisk et al. v. France. Same.

FEB. 13, 1883.

Woods v. McBride. Restraining order granted.

Hampton v. Hampton. Attachment against trustee ordered to issue.

Fitzmorris v. Moral. Hearing ordered for the appointment of receiver.

Suiffner v. Greenapple. Sale finally ratified.

Burns v. Kinney. Amendment to bill allowed.

Hollidge v. Borland. Decree pro confesso against certain defendants granted.

Moore v. Harrison. Sale set aside.

Lawrence v. Chapman. Restraining order granted.

FEB. 14, 1883.

Shoemaker v. Campbell. Sale set aside and resale ordered on terms.

Lawrence v. Chapman. Restraining order modified.

Davidson v. Pratt. Appearance of absent defendant ordered.

Fenwick v. Stewart. Jackson allowed to intervene.

Hickey v. Kepler. Trustee directed to release and satisfy deed of trust.

FEB. 15, 1883.

Doyle v. Giddings. Decree pro confesso as to White.

Potter v. Potter. Sale confirmed and sale ordered.

Tayloe v. Tayloe. Auditor's report confirmed.

Collins v. Johnson. Restraining order granted, returnable Feb. 26, 1883.

Scheer v. Oertley. Reformation of deed ordered.

Agnew v. Ford. Reference to auditor ordered.

Curtis v. Kines. Proceeds in hands of trustee condemned.

FEB. 16, 1883.

8074. Citizens' National Bank v. Fanning. Sale ordered and trustee appointed to sell.

**CIRCUIT COURT.—Justice Mac Arthur.**

FEB. 8, 1883.

Keyser v. Graydon. Judgment by default.

Given & Co. v. Chapman. Same.

Kneedler et al v. Barlow. Order to plead.

FEB. 9, 1883.

Hammer & Bailey v. Douglass. Judgment confirmed for \$832.

Alexander v. Dist. of Col. Order appointing Brooke Mackall and David E. McComb additional arbitrators.

Langdon v. Evans. On trial.

FEB. 10, 1883.

Keyserv. Hume et al. Death of Hume suggested.

Central Nat. Bank v. Graydon. Judgment by default.

Williams v. Bliss. Same.

Sinclair v. W. & G. R. R. Co. Judgment on award.

Blakeslee v. Silverberg. Judgment on motion; appeal prayed.

Springman v. B. & P. R. R. Co. Certiorari quashed; appeal prayed.

Valentine v. Van Buren. Motion for security for costs granted.

Thompson v. Shepherd. Motion for new trial filed.

Cooley v. Scala. Motion to dismiss appeal overruled.

Stevens v. Pulman. Motion in arrest of judgment; appeal prayed.

Nimmo v. Reed. Judgment granted.

Hicks et al. v. Kaufman. Judgment by default.

Costello v. Knight. Motion to strike out demurrer overruled.

FEB. 12, 1883.

Keyser, receiver, v. Hitz. Verdict for defendant.

**CRIMINAL COURT.—Justice Wylie.**

FEB. 1, 1883.

U. S. v. Brady et al.

Emil Schulz and Edwin Hall testified. The court decided not to submit to the jury two classes of signatures, one true and another not signed by witness, as the province of the jury was to act upon evidence and to act as experts.

FEB. 2, 1883.

U. S. v. Brady et al.

Mr. Hall, Clark S. Pierce, William Crowne, and H. E. Dunbar were examined. Mr. Hall testified as to the genuineness of signatures to certain petitions for increase of service.

FEB. 3, 1883.

U. S. v. Sylvester Thomas. Indicted for larceny; pleaded guilty; sent to jail.

U. S. v. Henry Hutchinson. Same.

U. S. v. Samuel Seymour. Indicted for assault with intent to kill; pleaded guilty; sentenced to the penitentiary for three years.

FEB. 5, 1883.

U. S. v. Brady et al.

The court was occupied in reading official papers connected with certain routes.

FEB. 6, 1883.

Thomas Steele, Jacob B. Bergman, and J. H. Hayes were examined and cross-examined. Some important letters were identified.

FEB. 7, 1883.

Frederick Steinecke, J. Chancey Hayes, Calvert W. Cornell, John M. Tine, and John H. Prior were examined and testified. The court ruled that no reference should be made to what a defendant knew or did not know in violation of his rights and privileges under the law.

FEB. 8, 1883.

A. P. Nichols, Calvin G. Shaw, A. J. Brewer, Frank M. Schneider, and Mr. Prior were examined. Mr. Brewer testified as to the way circulars from the Post Office Department were signed.

FEB. 9, 1883.

U. S. v. Smith.

W. C. Smith, John C. Davis, Charles F. Perkins, J. B. Adams, and James G. Rankin testified. An affidavit of a public contractor was attempted to be proved fraudulently by the witness Smith. This was objected to on the part of the defense, because the contractor was not of the defendants. Objection was made to the admittance of testimony of a conversation the witness had with the defendant Rerdell.

**PROBATE COURT.—Justice Hagner.**

JAN. 30, 1883.

Will of John P. Crutchet admitted to probate and record, and letters issued and party bonded.

Estate of Emil Aretander. Order allowing administrator to compromise claim.

Estate of John M. Lyon. Caveat dismissed and letters issued and party bonded.

Estate of Henry B. Fitzhugh, minor. Revoking order of investment and guardian authorized to send ward to school.

Will of Edward Taylor filed for probate.

JAN. 31, 1883.

In re Estate of J. Wiley Aulick. Inventory returned.

In re Estate of Patrick Casey. New bond given by administrator.

FEB. 1, 1883.

Will of Thos. Harper proved.

FEB. 2, 1883.

Will and codicil of Sarah Hammond filed; petition for letters and renunciation of executors.

Estate of Charles Perry. Inventory returned; petition and order of sale.

Will of F. A. Fill fully proved.

Estate of W. S. Buchly. Order modified and usual bond required.

Estate of Susannah C. Birch. Executors bonded and qualified.

Estate of Josephine Meeker. Administrator appointed and qualified.

Estate of William I. Dyer. Order of sale suspended.

In re Will of Clark Mills. Order directing issues to be made up and collector appointed.

In re Ella B. and Henry C. Johnson, minors. Guardian appointed and bonded.

In re Orphans of Louis Neurath. Guardian appointed and bonded.

Estate of Louis Neurath. Widow elects to take dower.

In re Leonora L. Pearson, minor. Guardian appointed and bonded.

Estate of August Koch. Renunciation of executor. Will probated and recorded, and letters issued, and party bonded and qualified.

Estate of Emil Aretander. Order allowing administrator to compromise claim.

Estate of Margaret Burke. Sale ordered.

Estate of Ann M. Green. Report of administrator approved.

Estate of Helen L. Stewart. Report of administrator with exhibit; sales ratified and allowance of credits.

Estate of Erasmus J. Middleton. Account of executor approved and passed.

Estate of James C. Holt. Same.

Will of Martha Frazer proved; admitted to probate and record.

Will of Margaret A. Randall filed.

In re Belva A. Lockwood, guardian. Citation returned served.

In re Henry Ruppert, guardian. Bill filed and certified.

Will of Chas. McLane proved and admitted.

Estate of Susanna V. Walker. Final notice to administrator.

Estate of John P. Crutchet. Inventory returned.

Estate of Thomas Harper. Proof of publication filed; will and codicil proved and letters granted.

FEB. 5, 1883.

Estate of John J. F. Joachim. Proof of service of notice, &c., filed.

In re Cornelia Cooper, guardian. Petition and order; guardian bonded.

Estate of John P. Crutchet. Petition and order of sale.

Will of Margaret A. Randall. Petition of probate, &c., and order of publication.

Estate of Egbert Thompson. Amendment of application for administration, and proof of publication filed, and order appointing administratrix, and bonded.

FEB. 6, 1883.

Alleged codicil of Margaret A. Randall filed.

In re Alphonzo T. T. Donn, guardian. Order requiring him to file account.

Estate of James H. Caustin. Decree removing administrator de bonis non.

In re Wm. H. Frazier, guardian. Petition and order of appointment and bonded.

Estate of Robert U. Wyman. Petition of executor, &c., and renunciation of one of the executors; order admitting will to probate; letters granted; bonded and qualified.

Estate of Matthew H. Carpenter. Report of books sent.

Estate of Egbert Thompson. Administrator bonded and qualified.

In re Peter P. Bergvin, guardian. Bonded and qualified.

Estate of Wm. Orme. Final notice issued to executor for settlement.

Estate of Thos. Harper. Executrix bonded and qualified.

FEB. 7, 1883.

In re Wm. H. Barstow, guardian. Notice to attorney of intention to move the court to transfer bonds to the custody of the court; service acknowledged.

In re Wm. H. Frazier, guardian. Bonded.

FEB. 8, 1883.

Will of Margaret T. Hayden filed for probate, and petition of executor and will proved.

Estate of Mathew H. Carpenter. Account of administrator approved and passed, and order to transmit money to administratrix.

Estate of Elvira B. Brandon. Executor bonded and qualified.

FEB. 9, 1883.

Will of John Corridon filed for probate.

Estate of James F. Meguire. Inventory and report of collector filed.

Estate of Wm. S. Buchly. Inventory and order of sale of stock.

Estate of Wm. A. Sorrell. Petition and order appointing guardian to orphan children; bonded.

Estate of Wm. I. Dyer. Order to withdraw petition, &c.

In re Eliza Cluna, guardian. Petition and order of appointment; bonded.

Estate of Angus Macdonald. Petition of widow and order appointing administrator; bonded.

Estate of Eliza Bold. Petition; order of publication returnable.

Estate of Sarah L. Baden. Petition and order appointing administrator; bonded.

Estate of Martha Frazer. Same.

Will and codicil of Emeline Carter filed and proved. Petition for probate and letters and renunciation of one of the co-executors. Publication ordered.

Estate of Richard Henderson. Petition and order appointing administratrixes; bonded.

Estate of John Randall. Same.

In re Henry Ruppert, guardian. Annual allowance ordered for maintenance of wards.

In re Mildred E. Carlisle et al., guardians. Same.

Estate of Charity L. Farr. Account of administrator passed.

In re Henry Ruppert, guardian. Accounts passed.

Estate of Wm. Stickney. Order passing account of administratrix.

Estate of Margaret A. Randall. Petition and caveat filed.

Estate of Benj. S. Bohrer. Petition and order approving compromise of claims by executors.

24240. J. S. Cohen & Co. v. Nannie Gutman. Account, \$500. Piffs attys, H. O. & E. Claughton.

24241. Henry O. Towles v. Thomas Murphy. Account, \$311.50. Piffs attys, Abert & Warner.

24242. Marvin Eastwood v. Robert A. Balloch. Note, \$281. Piffs atty, W. J. Newton.

24243. Francis Banks v. Richard Norris. Notes, \$165. Piffs atty, H. W. Garnett.

24244. Abner F. Dunnington et al. v. The Penn. R. R. Co. Account, \$25,000. Piffs attys, Worthington & Heald. FEB. 14, 1883.

24245. J. W. Mumper v. Asbury G. Appleman et al. Bond, \$5,000. Piffs attys, Kimball & Kimball.

24246. Outler & Foster v. James D. Cross. Account, \$220.80. Piffs attys, Edwards & Barnard.

24247. Walker, Strong & Co. vs. Laura V. Cross. \$248.20. Piffs atty, Edwards & Barnard.

24248. Butler, Clapp & Co. v. Nain Gutman. Note, \$273.21. Piffs atty, H. W. Garnett.

#### IN EQUITY.—New Suits.

FEB. 12, 1883.  
24247. Robert J. Douglass v. John Langford et al. Oriditors' bill. Com. sol., John Crulksbank.

24248. William L. Wood v. James D. McBride. Injunction. Com. sol., Wm. A. Meloy.

24249. Isaac S. Lynn v. The Commissioners of the District of Columbia et al. Com. sol., J. H. Bradley.

24250. Rachel A. Wood v. Andrew Wood. For divorce. Com. sol., R. Coyle.

24251. Michael Burke et al. v. Lester A. Bartlett et al. For receiver and account. Com. sol., L. H. Pike.

FEB. 13, 1883.  
24252. John Fitzmorris v. Thomas H. Morgan. For receiver. Com. sol. W. J. Newton. Defts atty, B. T. Hanley.

24253. Benjamin Laurence et al. v. James J. Chapman et al. Judgment creditors' bill. Com. sols., Hagner & Maddox.

24255. Margaret Collins et al. v. Walter O. Johnson. For injunction. Com. sol., D. W. Glasie.

#### Legal Notices.

##### THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Frederick A. Fill, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

HENRY WISE GARNETT,  
Administrator c. t. a.

e-3

##### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William S. Buchly, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

ALICE T. BUCHLY, Executrix.  
JOHN B. LARNER, Solicitor. 7-3

##### THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1883.

CHARLES M. RANDALL,  
mark.  
Administrator.

JOHN CRITCHER, Solicitor. 7-3

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

FEB. 9, 1883.  
24221. James T. Walker v. Thomas E. Waggaman. Appeal. Defts atty, H. T. Taggart.

FEB. 10, 1883.  
24222. Edwards M. Burchard v. James T. Brashears. Notes, \$443.75. Piffs atty, Chas. A. Walter.

24223. Emily Beale v. H. H. Hempler. Notes, \$250. Piffs atty, J. H. Saville.

FEB. 12, 1883.  
24224. Cornelius J. Moynihan v. The Pa. R. R. Co. Dam ages, \$5,000. Piffs attys, Crittenden & Mackey.

FEB. 13, 1883.  
24225. F. H. Smith & Son. v. William H. Glascott. Appeal. Defts atty, E. R. D. Mayne.

24226. John J. Cook et al. v. John O'Neal. Account, \$164.95. Piffs atty, Jas. Fullerton.

24227. Marvin Eastwood v. Frank Elchelberger et al. Note, \$100. Piffs atty, W. J. Newton.

24228. Seaton Perry et al. v. Henry O. Bowie. Judgment of Justice Walter, \$21.86. Piffs atty, R. R. Perry.

24229. Same v. William Morgan. Judgment of Justice Walter, \$37.20. Piffs atty, same.

24230. Same v. Sarah McDonald. Judgment of Justice Walter, \$30.21. Piffs atty, same.

24231. Same v. Emma D. Setz. Judgment of Justice Walter, \$29.74. Piffs atty, same.

24232. Same v. Freddie B. Saunders. Judgment of Justice Walter, \$35.59. Piffs atty, same.

24233. Same v. J. M. Outts. Judgment of Justice Walter, \$43.64. Piffs atty, same.

24234. Same v. Julia Burns. Judgment of Justice Walter, \$35.55. Piffs atty, same.

24235. Martha J. McKenney v. The W. & G. E. R. Co. Damages, \$10,000. Piffs attys, Cook & Cole.

24236. B. D. Webb v. Joseph A. Bohn. Account, \$132.20. Piffs atty, O. Brown.

24237. W. S. Hoge v. v. Alexander Murray. Notes, \$11.75. Piffs atty, O. G. Lee.

24238. John W. Starr v. Morgan R. Wise. Notes, \$75. Piffs attys, Hagner & Maddox.

24239. E. S. Jaffray & Co. v. Nannie Gutman. Account, \$70.57. Piffs attys, H. O. & E. Claughton.

**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Angus A. McDonald, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1883.

ANDREW A. LIPSCOMB,  
Administrator 321 4½ street, n. w.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Clare Smith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of February, 1883.

WALTER C. SMITH, Executor.  
ARTHUR T. BRICK, Solicitor.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah L. Boden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1883.

GEORGE C. BODEN, Administrator.  
RANDALL HAGNER, Solicitor.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration w. a., on the personal estate of Martha Frazer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1883.

DAVID BLAIR, Administrator w. a.  
JOHN N. OLIVER, Solicitor.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Susanna C. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

JOSEPH S. BIRCH, Executor.  
HANNA & JOHNSTON, Solicitors.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 15, 1883.**

In the case of George P. Zurhorst, Administrator of Harriet Park Phisk, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7-3 H. J. RAMSDELL, Register of Wills.

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the case of Lambert Tree, Executor of Lambert Tree, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

WM. F. MATTINGLY, Solicitor.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of February, 1883.**

ROBERT DAVIDSON AND OTHERS } No. 8,464. Eq. Doc. 22.

WM. E. PRALL AND OTHERS.

On motion of the complainants, by Messrs. Riddle, Davis and Padgett, their solicitors, it is ordered that the defendants, William E. Prall and Julia L. Prall, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 7-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. February 12, 1883.**

CHARLES RINEHART } No. 8,367. Equity Docket 22.

SALLIE E. RINEHART.

On motion of the petitioner, Charles Rinehart, by William F. Mattingly, his solicitor, it is this 12th day of February, A. D. 1883, ordered that the defendant, Sallie E. Rinehart, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to said day, the first publication thereof to be not less than forty days before said day.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 7-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 9, 1883.**

In the matter of the Will of Eliza Bold, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by John H. Brooks.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

H. T. WISWALL, Solicitor.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 9, 1883.**

In the matter of the Will and Codicil of Emeline Carter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Dorsey E. W. Carter.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

H. O. & R. CLAUGHTON, Solicitors.

7-3

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court.**

LEOPOLD NEUMEYER

No. 8,139. Equity.

JOHN NEUMEYER ET AL.

Ordered by the court, on this 24th day of January, A. D. 1883, that the sales made and reported by Leopold Neumeyer, trustee, for the sale of the real estate of Christopher Neumeyer, deceased, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of February next. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before the 26th day of February, A. D. 1883. The report states the amount of sales to be \$8,899.44.

By the Court.  
A true copy.

CHARLES P. JAMES, Justice.  
Test: 6-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 2, 1883.**

In the matter of the Will of Sarah Hammond, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Edward H. Thomas.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.  
Test: 6-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 5, 1883.**

In the matter of the Will of Margaret Ann Randall, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Thomas I. Hall, of Baltimore, Md.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
WM. F. MATTINGLY, Solicitor. 6-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. Tuesday, February 6, 1883.**

In the case of James W. Orme and Joseph Libbey, Executors of William Orme, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 2d day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6-3

H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, February 7, 1883.**

JAMES CHASE AULD ET AL.

In Eq. No. 7918 Doc. 21.

LAURA S. H. COOKE ET AL.

On motion of the plaintiffs, by Francis Miller, their attorney, it is ordered that the defendants, Kate Chase Sprague and Nellie Chase Hoyt, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 6-3 R. J. MEIGS, Clerk.

**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscriber, of Washington City, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John P. Crutchet, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1883.

AMOS M. JUDSON, Administrator w. a.  
CHARLES A. WALTER, Solicitor. 6-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Josephine Meeker, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

6-3 JAMES R. YOUNG, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 9, 1883.**

In the case of John F. Hanna, Administrator, c. t. a., of Felix Barotti, deceased, the Administrator, c. t. a., aforesaid has, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 6-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. February 2, 1883.**

In the case of Rufus K. Helphenstine, Administrator of Susanna V. Walker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 2d day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: 6-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of February, 1883.**

SIMON DEARHAM, Plaintiff

No. 24,118. Law Docket.

SOLOMON MARCUS, Defendant.

On motion of the plaintiff, by Messrs. H. O. & E. Clough-ton, his attorneys, it is ordered that the defendant, Solomon Marcus, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

MAC ARTHUR, Justice.  
True copy. Test: 6-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM P. YOUNG

No. 7,597. Eq. Doc. 21.

ELIZABETH H. GALE ET AL.

Ordered, this 6th day of February, 1883, that the sale of No. 215 B street, northwest, east 23 feet of lot 4, reservation eleven, in the city of Washington, this day reported in this cause by William A. Meloy, trustee, at \$1,800, be ratified and confirmed unless cause to the contrary be shown on or before the 9th day of March, A. D. 1883. Provided, a copy of this order be published three times in the Washington Law Reporter prior to said day.

By the Court.

CHARLES P. JAMES, Justice.  
A true copy. Test: 6-3 E. J. MEIGS, Clerk.



*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of February, 1883.

**PARRIS WALKER ET AL. } No. 8,441. Equity Docket 22.**

**Wm. L. KIMMELL.**  
On motion of the plaintiffs, by Mr. Kimball, their solicitor, it is ordered that the defendants, William L. Kimmell, Andrew J. Kimmell and Frank Kimmell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
True copy. Test: **6-3 R. J. Meigs, Clerk, &c.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas Harper, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1883.  
**6-3 LETTIE MARKS HARPER, Executrix.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, February 2, 1883.

In the matter of the Will of Hugh Kandler, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lisette Candler.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: **CHARLES P. JAMES, Justice.**  
Test: **6-3 H. J. RAMSDALL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ann C. Carroll, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 12th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of January, 1883.  
**MARIA C. FITZHUGH, Executrix.**  
**6-3 GEO. F. APPELBY, Solicitor.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 30th day of January, 1883.

**PERCY LEE WATERS, by next friend, } No. 8233. Eq. Doc. 22.**

**JOSEPH G. WATERS ET AL.**  
On motion of the plaintiff, by Messrs. Saville and Fendall, his solicitors, it is ordered that the defendants, Isabella Weisel and Daniel Weisel, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: **6-3 R. J. Meigs, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, January 30, 1883.

In the matter of the Will of Noble Johnson, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Noble Johnson.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **6-3 H. J. RAMSDALL, Register of Wills.**  
**GEO. F. GRAHAM, Solicitor.**

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ernest Dickas, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.  
**6-3 ANNIE HEBSACKER, Executrix.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of New York City, N. Y., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. Hassall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.  
**FREDERICK R. FALCONER, Executor.**  
**6-3 JNO. F. ENNIS, Solicitor.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Eliza L. Glover, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1883.  
**6-3 SAM'L. O. MILLS, Administrator.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Margaret Burke, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.  
**JEREMIAH O'SULLIVAN, Administrator.**  
**6-3 HANNA & JOHNSTON, Solicitors.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**CHARLES A. LANGLEY } No. 8,303. In Equity.**

**ELIZA FERRY ET AL.**  
On motion of the solicitor for plaintiff, it is ordered by the court this 26th day of January, 1883, that the sale made by the trustee in this cause of the real estate in the proceedings mentioned, known as part of lots 11 and 12, in Davidson's subdivision of square No. 216, in the city of Washington, and by said trustee reported to this court, be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 26th day of February, 1883. Provided, a copy of this order be inserted in the Washington Law Reporter once in each of three successive weeks before said 26th day of February, 1883.

By the Court. **A. B. HAGNER, Assoc. Justice.**  
A true copy. Test: **6-3 E. J. Meigs, Clerk.**

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louis Neurath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1883.  
**OATHARNE E. NEURATH, Executrix.**  
**6-3 HINN & THOMAS, Solicitors.**

# Washington Law Reporter

WASHINGTON - - - - - February 24, 1883

GEORGE B. CORKHILL - - - EDITOR

**For What a Bill of Review will Lie, and what Questions are open for Examination under it.**

A bill of review may be brought in two cases—for error of law appearing in the body of the decree, and upon the discovery of new matter (Story Eq. Pl., 404), and the rule since Lord Bacon's time has been that a party must perform the decree before the bill can be filed. If it is not for the payment of money the court will under special circumstances, dispense with a strict compliance, but if it be for the payment of money, there is no discretion left in the court, unless the complainant sets up his utter inability to comply, arising from insolvency. *Davis v. Speiden*, (3 Mac A., 291.)

In the latter case the difference between the English and American practice in the enrollment of decrees is considered, and following the decision in *Whiting v. Bank of U. S.*, 13 Pet., 6, the court holds that it is now settled in our practice that the pleadings, orders and proceedings in the cause, as well as the final decree, constitute that portion of the record open for inspection, in the examination of all errors of law on a bill of review.

In the recent case of *Shelton et al. v. Van Kleeck et al.*, (No. 888, Oct. Term, 1882), in the Supreme Court of the United States, it is held "that the only questions open for examination upon a bill of review for error of law appearing on the face of the record, were such as arise on the pleadings, proceedings and decree without reference to the evidence in the cause. This has been many times decided in this court. *Whiting v. Bank of U. S.*, 13 Pet., 6; *Putnam v. Day*, 22 Wall., 66; *Baffington v. Harvey*, 95 U. S., 99; *Thompson v. Maxwell*, ib., 397."

The court further holds in this case that "a demurrer admits only such facts as are properly pleaded. As questions of fact are not open for re-examination on a bill of review

for errors of law, the truth of any fact averred in a bill of review inconsistent with the decree is not admitted by a demurrer, because no error can be assigned on such fact, and it is, therefore, not properly pleaded."

Certain matters set forth in affidavits and relied on as newly discovered, were held not entitled to be considered as such, because an addition to the transcript, filed by consent, showed that the affidavits were actually read in evidence on the hearing of a motion made before the confirmation of a sale, to set the sale aside. In relation to them the court observed:

"These affidavits cannot be considered on a bill of review to reverse the decree of confirmation for errors appearing on the face of the record, because as evidence they form no part of the record which can be looked into on such a review. But as part of the exhibits annexed to a bill of review for alleged discovery of new matter, they may be referred to for the purpose of determining whether upon the showing of the complainant in review, the matter alleged to be new first came to his knowledge after the time when it could have been made use of at the original hearing."

**GIFT ENTERPRISE.**—"In common parlance, a gift enterprise is understood to be substantially a scheme for the division or distribution of certain articles of property, to be determined by chance, amongst those who have taken shares in the scheme, and the phrase has attained such a notoriety as to justify us in taking judicial notice of what is meant and understood by the use of it." (*Lohman vs. State*, 81 Ind. 15.)

**CLOSE.**—"The word 'close' signifies an interest in the soil, and the charge that the appellant took the sheaves of wheat from the appellee's close is equivalent to saying that they were taken from her land, in *Grant Co.*, Ind. (*Richardson v. Brewer*, 81 Ind., 107.)

**NUMBER OF EMPLOYEES IN GOVERNMENT DEPARTMENTS AT WASHINGTON.**—State Department, 63; Treasury Department, 2,422; War Department, 1,572; Navy Department; 159; Interior Department 2,640; Post-Office Department, 560; Department of Justice, 75; Total, 7,491.

# Supreme Court District of Columbia

OCTOBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

CHARLES COLEMAN

v.

CHRISTIAN HEURICH.

No. 19,882. AT LAW.

{ Decided February 12, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. In an action for malicious prosecution evidence that the defendant, in suing out the warrant, acted under the advice of a magistrate, police officer or other layman, is not admissible.
2. Nor will the declarations of the defendant, *post litem motam*, be admissible in his defence.
3. The plaintiff, for the purpose of showing the want of probable cause may show that, prior to his arrest he was a man of good character and reputation in the community in which he resided, and that the defendant knew this.
4. Where it appears in the bills of exceptions that notwithstanding an exception taken to the admission of certain testimony given by one of the defendant's witnesses, the same testimony was afterwards given by the defendant himself without objection on the part of the plaintiff, the ruling of the court in admitting the testimony in the first instance will be no ground for a new trial.
5. In an action for malicious prosecution the defendant may testify as to his motive and that he was not actuated by any malice or ill will in instituting or carrying on the prosecution.
6. Where a party selects from the evidence bearing upon the question of probable cause an isolated circumstance and requests the court to express to the jury an opinion as to its probative force, separated from any other fact proved in the case, a refusal to do so is not error.
7. Nor is it error to refuse to instruct the jury that in consequence of the defendant's failure "to assail the character and reputation," of the plaintiff, the presumption of the latter's good character and reputation "become absolute in the case."
8. Nor to refuse certain prayers presenting propositions of law already set forth in other prayers and subsequently enforced by the charge of the court.
9. The practice of multiplying instructions unnecessarily and of announcing to the jury abstract propositions of law in the words of the definitions from text books, whereby the jury are misled and embarrassed, commented on and condemned.
10. While it is the province of the jury to find whether the facts alleged in support of the presence or absence of probable cause and the inferences to be drawn therefrom really exist, it is for the court to determine whether upon the fact so found there be probable cause or the want of it: It is therefore error for the court to charge the jury "Now I am going to leave the question of *probable cause* and of *malice* entirely open for the decision of the jury upon the circumstances of the case."

11. Casual words in the midst of a long charge where it is apparent that they could not have been understood by the jury as nullifying all the foregoing instructions in the prayers and charge will not be a ground for new trial.

12. In an action for malicious prosecution a verdict for the defendant will not be set aside although the justice trying the cause has erroneously charged the jury if it appear from the record that (conceding the evidence to be true) the plaintiff has failed to make out a case of want of probable cause.

13. Facts reviewed, which the court considers repel the charge of want of probable cause.

THE CASE is stated in the opinion of the court.

COOK & COLE for plaintiff.

WM. M. MATTINGLY for defendant.

This is an action for malicious prosecution and imprisonment. The declaration states, with the usual averments of evil motive, that the defendant sued out a warrant against the plaintiff on the 9th of February, 1878, upon the charge of having stolen a lot of copper pipe, and caused him to be arrested and imprisoned; that the charge was false and groundless, and that the prosecution was dismissed and wholly ended before this suit was brought, and the plaintiff claimed \$10,000 damages.

On the same day a similar declaration was filed in case No. 19,883, which was brought by William Neil, the brother of Coleman, against the same defendant.

The general issue was pleaded in both cases and by agreement they were tried together before a jury, which rendered a verdict for \$50 in Neil's case, and returned a verdict for the defendant in the case at bar.

Neil's case is not before us; but the case of Coleman is here upon a number of exceptions to various rulings of the judge at the trial below. Several of these relate to the rejection and admission of evidence; others to the rejections of prayers offered by the plaintiff; and exception is also taken to certain designated portions of the judge's charge to the jury.

*First, third and sixth exceptions.*

The points presented by the first, third and sixth exceptions are so nearly the same, that they can be more conveniently considered together.

It appears from the *first* exception, that after the justice of the peace, Taylor, had testified on behalf of the plaintiffs, that he had issued the warrant upon the application of the defendant, and had produced the several papers and docket entries relating to the case, he was asked on cross-examination by defendant's counsel: "Did you not tell him (the defendant) at the time, that it was proper for him to

swear out this warrant?" To this question the plaintiff's counsel objected "because the same was not proper testimony upon the issue joined, and because it does not relate to anything that was brought out on the examination-in-chief." The objection was overruled, and the witness answered "I did."

The third exception shows that officer Sturgis, a member of the police force, testified in behalf of the plaintiff, to the circumstances connected with the arrest; and upon cross-examination he was asked "if he did not advise Heurich that he was justified under the circumstances in swearing out a warrant for the arrest of the said plaintiff." To this question the plaintiff's counsel objected upon the grounds urged to the similar question propounded to the justice on cross-examination, and the objection having been overruled, the witness answered that he told Heurich "that the information they had received would justify him in getting a warrant."

In the further progress of the case, the defendant was examined as a witness in his own behalf, and stated that after certain communications with the officers, he went to the justice of the peace, Taylor, "and told him all the circumstances, and he told him he was justified in suing out the warrant;" and to this conversation between the defendant and the justice the plaintiff objected, and the objection was overruled, and the testimony admitted, and this alleged error is the subject of the sixth exception.

The evident design of the counsel in these offers, was to support the contention that the defendant was not liable for the prosecution since he had acted under the advice of the magistrate and policeman in suing out the warrant.

In our opinion the evidence was not admissible. Although a party may defend himself in this form of action by proof that before he took steps to procure the arrest he consulted with counsel learned in the law and laid before him a full and fair statement of the facts, as they were then known to him, and sued out the warrant under his advice, yet the authorities show no case where a similar exoneraton has been allowed because the party acted under the advice of a magistrate, officer or other layman. *Stewart v. Young*, 36 Md., 256. This was very clearly stated afterwards in the eighth instruction granted by the court at the request of the plaintiff, and also in the charge to the jury on page 36 of the printed record.

The questions set out in the first and third exceptions were liable to the additional objection that the matters therein referred to

were not so connected with the subject brought out on the examination-in-chief as to authorize the defendant to make them the subject of cross-examination. If the inquiry had been a proper one, it could only have been pursued by the defendant by making the witness his own, and recalling him at the appropriate stage of the trial.

*Second exception.* The error alleged in this exception was the admission, upon cross-examination of officer Sturgis, of the defendant's declaration at the Police Court as to his indisposition to prosecute the plaintiffs because they were married men, and further that the defendant applied to the district attorney to *not pros.* the case.

The latter part of this statement was substantially given afterwards by the defendant in his examination-in-chief, and went to the jury without objection; and therefore the plaintiff cannot be supposed to have been injured by its admission on the cross-examination of Sturgis. Still we think the entire offer inadmissible, since Heurich could not properly offer such declarations *post litem motam* in his own exculpation.

The admission of such evidence would be in conflict with the cardinal maxim of the law, which prohibits a party's acts or declarations to be given in evidence in his own behalf. *Crawford's adm'r v. Beall*, 21 Md., 233.

*Fourth exception.* We are also of the opinion that the plaintiff was entitled, in the manner claimed in the fourth exception "to prove that prior to his arrest he was a man of good character and reputation in the community in which he resided, and that the defendant knew this, as tending to prove the want of probable cause." The offer was couched in the very words of the decision in the case of *Blizzard v. Hays*, 46 Indiana, 166, cited in note 3 to section 454 of 2d Greenl. on Ev., and seems to be supported by the opinion of the court in *Barron v. Mason*, 31 Vermont, 189 and also by a case in 23 Ills.

The statement in the text of 2d Greenl., section 458, relied upon by defendant's counsel as controverting this position, plainly refers to the right of the defendant to offer evidence of the bad character of the plaintiff in the first instance. The judge's instruction that "these men stand in the position of innocence in regard to the offence with which they are charged," and "that there is no inference to be drawn against their character on account of that criminal accusation made against them, and subsequently withdrawn," seems to be too restricted a statement of their right to be presented before the jury as men of good character, in general, as well as with respect to this

accusation; and we think they were certainly entitled to show that this important fact in their favor was known to the defendant when he sued out the warrant.

*Fifth exception.* The fact stated by the witness Steeps, on cross-examination, that the defendant's wife furnished the "collateral," the deposit of which procured the release of the plaintiffs from imprisonment, was testified to afterwards by the defendant himself, as appears from the statement in the seventh exception, with circumstances of greater detail, altogether without objection on the part of the plaintiff, and hence the ruling of the court on this exception, if incorrect, could not properly be examined here.

*Seventh exception.* The plaintiff insists that the court erred in permitting the defendant to testify, on his examination-in-chief, "that he was not actuated by any malice or ill will in instituting or carrying on the prosecution."

In our opinion the court's ruling on this offer was correct.

The objection urged by the plaintiff's counsel that the allowance of such evidence would sanction the admission of testimony, which in its nature it would be impossible to contradict, would equally exclude the denial of evil intent by a prisoner when examined in a criminal case. But the competency of such evidence in this class of cases cannot be doubted; although its admission by the court, by no means, insures its adoption by the jury as true. It is well settled that a party who becomes a witness, becomes so for all purposes unless the statute limits his capacity, and may testify to his own mental processes, such as knowledge and intent, as well as to other facts. *Wheldon v. Wilson*. 44 Maine, 1; *Lawton v. Chase*, 108 Mass., 241.

In *Flickinger v. Wagner*, 46 Md., 600, which was an action for malicious prosecutions, the defendant was asked by his counsel; "What was your motive in making the charge of perjury against the plaintiff? and answered that his motive was justice to himself and to society." The court of appeal held that the question and answer were admissible, and said: "The motive which operated upon and induced the defendant to have the plaintiff arrested on the charge of perjury, was directly involved in the issues before the jury, and being a competent witness under the evidence act, the defendant had the right to explain to the jury the motive under which he acted."

The eighth exception involves the propriety of the refusal by the court grant of five of the thirteen prayers offered by the plaintiff, the remaining eight having been granted.

The fifth prayer asked the court to say,

"if the jury believe from the evidence that the facts and circumstances within the knowledge of the defendant were sufficient to induce a reasonably prudent man to believe that the coat referred to in the testimony was the coat of the plaintiff, Coleman, that does not in itself constitute a reasonable ground of suspicion strong enough to warrant a cautious man in instituting a criminal prosecution."

In this prayer the plaintiff undertook to select from the mass of evidence in the cause an isolated circumstance, and required the court to express to the jury an opinion as to its probative force, separated from every other fact proved in the case. In the language of the court of appeals in the case of *Johns v. Marsh*, 52 Md., 337, "If a prayer of this character could be entertained in respect to one fact or circumstance, it could be with respect to any other in the case, down to the remotest and the most minute; and if in respect to circumstances in support of any particular fact, it would be proper so to instruct in respect to all opposing or adverse facts or circumstances. This would lead to manifest abuse."

See also *Newham v. McComas*, 43 Md., 78.

Nothing could be more plainly calculated to mislead a jury than to grant such instructions. Their effect would be to deprive each individual fact of the just support it should receive from its correlation with co-existing facts, by presenting them separately, and seeking the aid of the court to belittle the importance of each particular circumstance *seriatim*.

In *Stansbury v. Fogle*, 37 Md., 387, the court, speaking of such a prayer, says: "But when a court has to deal with such a case after the evidence is all in, it would be highly improper to allow a part of the testimony, disconnected from all the other conceded facts and circumstances in the case, to be selected as the hypothesis, and upon that alone to declare there was probable cause for the prosecution, and thus defeat the action. Such a course would in many instances defeat the ends of justice."

Inadmissible as such a practice would be if repeated prayers presented successively all the facts in turn, it appears still more objectionable where a few only of the number are thus brought into a prominence calculated to dwarf those not thus presented; and which by this method the jury is almost invited to ignore.

The court was right in refusing to give an instruction based upon so partial and imperfect a presentation of the facts bearing upon the question of probable cause. Of the same character was the ninth prayer of the plaintiffs

which required the court to say that if the jury should find the police officers arrested the plaintiff before the defendant sued out the warrant, this did not constitute any reasonable or probable cause or justification whatever for the prosecution.

In our opinion this instruction also was properly refused.

The *seventh prayer* is predicated of the supposed right of the defendant "to assail the character and reputation" of the plaintiff, and asks the court to instruct the jury that in consequence of the defendant's failure to do so, the presumption of the plaintiff's good character and reputation "became absolute in the case." But we are not prepared to admit that a defendant, as of course, has the right in an action for malicious prosecution, "to assail the character and reputation of the plaintiff," except in reply to affirmative evidence on the point already offered by the plaintiff. On the contrary it is expressly laid down in 1 Greenl. Ev., §55, that evidence of the plaintiff's bad character is not received in trespass on the case for malicious prosecution. And the same author in sec. 458, vol. 2, states the matter thus: "Ordinarily, the character of the plaintiff is not in issue in this action. But in one case, where the charge was larceny, the defendant was allowed, in addition to the circumstances of suspicion, which were sufficient to justify his taking the plaintiff into custody, to prove that he was a man of *notoriously bad character*."

The position assumed in the prayer goes much beyond the decision in the exceptional case quoted by the author, and would amount to an assertion that the general character and reputation of a plaintiff may always be attacked in such an action, without reference to the nature of the charge, whether it be of theft or murder, or unchastity or forgery, and in the absence of evidence of good character already offered by the plaintiff. This would be too greatly at variance with the general principles on the subject of evidence of character to receive our sanction.

As the prayer contained this error it was properly rejected.

The *tenth* and *thirteenth* prayers present definitions of malice, abstract in form, and quite unnecessary, if correct, in view of the ample declarations on the subject already set forth in the plaintiff's fourth, eleventh and twelfth prayers, which were subsequently enforced by the charge of the court. It would be error in the trial court to multiply instructions unnecessarily, and thus mislead and embarrass the jury rather than assist them; and the practice of announcing abstract propositions of law, in

the words of the definitions from text books, or of adjudged cases, which may be multiplied indefinitely, is a most objectionable form of this error, universally condemned by the appellate courts. Further, the tenth prayer would have worked an injustice if it had been granted, since it states that "malice, in law, means an act done wrongfully and without reasonable or *probable cause*," whereas it is plain that a prosecution may have been instituted maliciously, notwithstanding the existence of probable cause.

The *thirteenth* proposition, that "malice may be inferred from undue activity and zeal displayed," is as abstract a proposition as would be a definition of virtue or vice. It assumes that there was proof of such zeal and activity on the part of *some one*, not named; and leaves to the jury the determination of what might or might not justly be considered an "*undue*" amount of these qualities. The court might equally have been asked to say that an *absence of malice* might be inferred from great "zeal and activity displayed," for such would be as fair an inference if the zeal and activity had been displayed in *releasing* the prisoner.

The prayers were properly rejected.

*The Judge's Charge.*—The next error complained of is the statement of the judge to the jury in his charge in these words: "Now I am going to leave the question of *probable cause* and of malice entirely open for the decision of the jury upon the circumstances of the case." The plaintiff contends that it was the duty of the judge, of his own motion, in the absence of special request to do so, to point out the facts testified to, bearing upon the question of probable cause, and to instruct the jury that those facts, if found by them, did or did not constitute probable cause.

The authorities relied on in support of this contention place the reason for the rule upon the anomalous nature of the inquiry, which in form is a negative averment made in the declaration and requiring some proof to be adduced in its support by the plaintiff; and also upon the intrinsic perplexity and difficulty of the question, which for that reason may always more properly be dealt with by the court. On the other hand it is insisted that there should be nothing special in the treatment of this class of cases by the court; and that, particularly where there is a decided conflict in the testimony, the whole inquiry should be left to the jury for their determination. The question seems to be by no means free from difficulty, on the words of the authorities, though that difficulty appears to

have arisen largely from the want of exactness in the expressions employed in stating the rule.

Thus in 2 Greenl., §454, the author, after stating that the facts material to this question are first to be found by the jury, and the judge is then to decide, as a point of law, whether the facts so found establish probable cause or not, says: "But if the matter of fact and matter of law, of which the probable cause consists, are intimately blended together, the judge will be warranted in *leaving the question to the jury*." This last sentence would appear at first to justify the ruling of the judge below in the case at bar, but, in my opinion such is not the meaning intended to be conveyed by the author.

I understand the law, in actions for malicious prosecutions, to be well settled, that where the defence of probable cause involves undisputed facts; as where the defendant in his plea justifies his action as having been taken in performance of duty, as by an officer under command, or by a sheriff executing the mandate of a competent court, and it is not disputed that the proof establishes the truth of the facts so pleaded—the judge, *without leaving the examination of the facts to the jury*, should, as a matter of course, declare his opinion whether the facts referred to constitute probable cause in law or do not.

Such action of the judge would be in accordance with the universal practice of the courts where numbers of questions compounded of law and facts are presented in the course of a trial, which must be wholly decided by the judge: as, for instance, the proper construction or proper execution of writings; the competency of witnesses; whether a confession offered in evidence should be excluded because of previous threats or promises; whether alleged dying declarations are properly receivable in evidence; whether there has been sufficient proof of loss of an original paper, and of search for it, to justify the introduction of secondary evidence of its contents; whether a communication is to be protected as confidential; &c., &c. In each of these cases there may be serious questions of disputed fact to be determined upon examination of witnesses, but such evidence, however extended and conflicting, is solely for the courts, and is never submitted to the jury; and the decision of the judge is based upon the credibility of the facts as well as the law.

But the inquiry arose whether the same rule should prevail where the facts were numerous and the evidence greatly conflicting, and closely blended with the principles of law governing the question of probable cause;

and the language is intended as a negative reply to this inquiry and a declaration cited from Greenleaf assumes that in *such* cases the court would depart from this strict practice, and would leave to the jury to decide upon the facts; advising them that as they should find the facts one way or the other, so the legal question of the existence of probable cause would stand. But I find no warrant in reason or authority for the position that the judge is authorised to submit the whole matter to the jury to determine for themselves the questions of law as well as of fact.

And when it is remembered that the defendant in this form of action is held to be fully justified if it appears he made the arrest upon the advice of counsel learned in the law that there existed probable cause for his action, while the amplest proof that he acted upon the advice of laymen, however intelligent, is held to be entirely immaterial, it would seem to be a strange inconsistency to leave the determination of the same question, at the trial to a jury of laymen, instead of again leaving its decision to one learned in the law—the judge on the bench.

Again; if there is any point that may be raised in such a trial, that each party might reasonably wish to submit to an appellate court, it would be the question whether the act complained of was one of wrong and oppression, or was one of duty justified by the surrounding facts. And yet, if the jury is authorized to decide this complicated and difficult inquiry, its decision upon the legal questions involved would be final and beyond re-examination.

The correct position, as I conceive it to be, is sustained by the best considered authorities. Thus, in 1 Taylor on Evidence, §26, the author, who has been discussing the duty of the judge to instruct the jury upon certain subjects, proceeds as follows:

"First. It is now clearly established—albeit the wisdom of the rule has recently been stoutly disputed—that the question of *probable cause* must be decided exclusively by the judge, and that the jury can only be permitted to find whether the facts alleged in support of the presence or absence of probability and the inferences to be drawn therefrom, really exist. For instance, in an action for malicious prosecution, the jury, provided the evidence on the subject be conflicting, may be asked whether or not the defendant, at the time when he prosecuted, *knew* of the existence of those circumstances which tend to show probable cause, or *believed* that they amounted to the offence which he charged; and if they negative either of these facts, the judge will decide,



as a point of law, that the defendant had no probable cause for instituting the prosecution; and this rule—which is based on the assumption that judges are far more competent than juries to determine the question how far it may have been proper for a person to have instituted a prosecution—is equally binding, however numerous and complicated the facts and inferences may be.”

In a note to this section, the author quotes the decision of Tindal, Ch. J., in the case of *Panton v. Williams*, 2 Q. B., 192, as follows: “Upon the bill of exceptions we take the broad question between the parties to be this, whether in a case in which the question of reasonable or probable cause depends, not upon a few simple facts, but upon facts which are numerous and complicated, and upon inferences to be drawn therefrom, it is the duty of the judge to inform the jury, that if they find the facts proved and the inferences to be warranted by such facts, the same do or do not amount to reasonable or probable cause; so as thereby to leave the question of fact to the jury, and the abstract question of law to the judge, and we are all of opinion that it is the duty of the judge so to do.”

This doctrine, so firmly established in England, is equally well settled here in jurisdictions entitled to our entire respect. In Maryland it has never been the practice to charge the jury in civil cases, except in response to specific prayers for instructions. But this established practice is departed from by the courts there in actions for malicious prosecution. A reference to some of the later decisions of the appellate court of that State will fully sustain this assertion.

Thus in the case of *Boyd v. Cross*, 35 Maryland, 197, the court says: “The want of probable cause is a mixed question of law and fact. As to the existence of the facts relied on to constitute the want of probable cause, that is a question for the jury; but what will amount to the want of probable cause in any case is a question of law for the court. The jury in our practice are always instructed hypothetically as to what constitutes probable cause, or the want of it, leaving to them to find the facts embraced in the hypothesis.”

This language is quoted “*totidem verbis*” in *Cooper v. Utterbach*, 37 Md., 317, and in the same volume at page 386, in the case of *Stansbury v. Fogle*, the court says: “It is now the established doctrine, both in this country and in England, that what facts and circumstances amount to probable cause is a question of law, but whether these facts and circumstances exist in the particular case is for the jury. In this State the jury are instructed hypothet-

ically, as to what constitutes probable cause, leaving it to them to find the facts embraced in the hypothesis.”

In *Medcalfe v. The Brooklyn Ins. Co.*, 45 Md., 205, the court quotes the same sentence and says: “This course was not adopted in the present case. The appellant prayed the court to instruct the jury that the question whether the defendant had probable cause for instituting the criminal proceedings against him, was one to be decided by the jury upon all the evidence in the case. . . . The appellant’s prayer submitted to the jury a question of law, and was therefore improper.”

And in the recent case of *Johns v. March*, 52 Md., 333, the court says: “Now, while it is perfectly well settled that if there be reasonable or probable cause to the knowledge and honest belief of the defendant, no malice, however flagrant or distinctly proved, will make the defendant liable, yet the question as to what does or does not amount to probable cause is not one to be submitted to the finding and conclusions of a jury. That question is one compounded of law and facts; and while the jury are required to find whether the facts alleged in support of the presence or absence of probable cause, and the inferences to be drawn therefrom, really exist, it is for the court to determine whether upon the facts so found, there be probable cause or the want of it. In view of this well-established principle, the prayer was properly rejected, even if it had been free from all other objection.”

Such a course would be especially proper in this jurisdiction, where the judges always charge the jury irrespective of the instructions asked.

For these reasons I think there was error in this part of the judge’s charge.

It is further objected that the judge erred in his ruling, on page 36, in these words: “But in this case it appears that the arrest was made and the officers who made the arrest have been examined as witnesses, and I have concluded to instruct you not to be bound by the advice which they gave the defendant in this action; but at the same time you may consider it as a circumstance going to show probable cause for the prosecution, that they had examined the facts of the case. It, I think, may be properly submitted to the intelligence of the jury, in coming to a conclusion whether the defendant had probable cause for the institution of that criminal proceeding.” The judge had in the eighth instruction granted on the plaintiff’s application, told the jury in the most explicit terms that the advice of the officers was not evidence tending to show the existence of probable cause, nor does it in any manner justify



the prosecution by the defendant, and the jury should give it no weight or consideration in their deliberations." And in the sentence in the charge immediately preceding that complained of, he had repeated that the advice of the officers "is no justification whatever."

It is scarcely conceivable that the learned judge intended in the very next sentence to unsay what he had thus twice so positively stated, and I do not think the words are fairly susceptible of this construction. He evidently meant to tell the jury that the fact of the antecedent arrest by the officers (persons employed to trace out crimes and arrest those appearing to be guilty) was a circumstance to be considered under the head of probable cause; and in this statement he was undoubtedly correct, and if the court had stated to the jury how far the facts, to be found by them supported this defence, it would certainly have called attention to the fact that the defendant's oath had been made after the plaintiff had been taken in custody by the policemen. But if the counsel for the plaintiff feared that the jury might have been misled by the alleged inconsistency of the language with the previous utterances of the court, they should have called the judge's attention to the point after the delivery of the charge, when the difficulty could readily have been removed.

The exception to that part of the judge's charge, in which he used the expression that "good faith requires that he should make some examination," &c., discloses no error. It is very apparent that this casual expression the midst of a long charge, could not have been understood by the jury as annulling all the foregoing instructions in the prayers and charges, inculcating the necessity of great caution on the part of the prosecutor before suing out the warrant. See particularly the sixth prayer of the plaintiff granted by the court.

It remains to inquire whether the errors we have found in the record are of such a character as to require us to send the case back for a new trial.

The evidence as to the advice given by the justice and officer, which forms the subject of the first, third and sixth exceptions was afterwards withdrawn from the jury by the most explicit instructions, and could not possibly be considered as having been before the jury when it retired for consultation. Its admission is, therefore, no ground for reversal.

We have stated that the judge below erred in leaving to the jury the determination of the question of probable cause and that it was his duty to have decided that matter himself

and announced his opinion upon the sufficiency of the evidence to establish the existence or non-existence of this all-important feature in the case.

If he had thus announced his opinion he would inevitably have told the jury that the facts did not sustain the averment of the declaration that the complaint was made and the arrest and imprisonment effected by the defendant, "without any reasonable or probable cause." The judge did not give such an instruction; but it is well settled that the appellate court may examine the record and ascertain for itself whether the case (conceding the testimony bearing on the subject to be true) is sufficient in law to sustain this indispensable averment, and if it finds, applying the words of the court in 45 Md., 206, that the appellant's evidence failed in its first and most essential feature—the absence of probable cause for the prosecution—to declare that it was legally impossible the suit could be sustained.

In our opinion there was such a failure in the case at bar.

It appears from the uncontested evidence that on the 8th of February, 1878, Heurich, the defendant, was the proprietor of a brewery in this city, and that Neil and the plaintiff, two colored men, who were half-brothers, were employed as workmen there; that on the night of that day a lot of copper pipe was stolen from the premises; that on the morning of the next day, an officer came to Heurich and asked him whether he had missed any copper pipe; that he said he had missed some, and the officer stated they had some at the station house, and on accompanying the officer to that place he was shown the pipe, and bag in which it was contained, and recognized both as his property. That he was there told that the bag and its contents had been found near his brewery the night before, and that near by was found a brown coat, which his nephew and others recognized as the coat of Coleman, the plaintiff. That in the pockets of the coat were found a piece of dog's chain, which Heurich recognized as belonging to him, and a piece of candle of the description used in the brewery; that there was some felt on one of the sleeves and the coat smelt of beer; that he was told Coleman had worn that coat to the depot in company with one of the employees when they went there to fetch some felt to the brewery, and had assisted in unloading the felt; that the copper pipe had been stored in a cooper's shop on the premises which was kept locked at night but was open by day, and that Coleman and Neil had assisted in putting the pipe in the cooper's

shop; that there was a fierce dog within the brewery enclosure; that Heurich found the officers had already arrested the plaintiff and Neil, on suspicion of having committed the larceny, and had them then confined at the station house; that he saw Coleman and Neil and thought their looks were suspicious. And that he thereupon made the affidavit and sued out the warrant, which was served on the plaintiff and Neil, who were held until the next day, when they were released upon bail furnished by Heurich's wife on his direction.

We are all of the opinion that these facts, shown to have been presented to Heurich at the time he made the affidavit, were sufficiently strong and clear to repel the charge that he instituted the prosecution "without any reasonable or probable cause." The defendant's act is to be estimated with respect to the state of affairs then presented to him, and it seems impossible to contend that these circumstances were not sufficient to have constituted a reasonable ground of suspicion in the mind of a cautious man, that the accused was actually guilty of the specific offence charged against him. As is said by Justice Washington (in the case of *Munns v. Dupont*, 3 Wash. C. C. R.), public officers in conducting prosecutions must proceed "in most instances upon the information of individuals; and if these actions are too much encouraged, if the informer acts upon his own responsibility and is bound to make good his charges at all events, under the penalty of responding in damages to the accused, few will be found bold enough, at so great a risk, to endeavor to promote the public good."

Every escape of evil doers from prosecution is a fresh incentive to further misdeeds. In the words of the court in *Boyd v. Cross*, 35 Md., 200, in a similar though less suspicious case, "Investigation was certainly proper, and the placing the plaintiff in the hands of the officers of the law, was the only course by which full investigation was likely to be had."

The ruling of the judge below, however, in thus leaving the question of probable cause to the jury, was altogether favorable to the plaintiff, since it placed it in the power of the jury to decide that the facts showed an absence of probable cause, while if the court had assumed the decision of the question it certainly must have decided that those facts plainly showed its existence. The ruling, therefore, could have worked no injury to the plaintiff, and constitutes no ground for reversal.

This view of the case is in accordance with the decision of the court in *Nicholson v. State*, reported in 38 Md., 154. In the trial of three

parties for murder the State offered in evidence the confession of Nicholson, one of the prisoners, made to a detective. The prisoner's counsel objected to its admission on the ground that it had been obtained by promise of immunity, and the detective, and the prisoner's brother, Thomas, who was present at the confession, testified before the court on the subject. The examination was protracted and the evidence extremely contradictory, and the court, recognizing the difficulty of a satisfactory decision, admitted the confession, and instructed the jury that they should give credence to it, or reject it, accordingly as they believed the statement of the detective or that of the prisoner's brother.

The court of appeals decided that this was error, as the entire inquiry, including the question of the credibility of the witnesses, should have been determined by the court, and could not be delegated to the jury; but it refused to reverse the judgment, and said the point was no longer material in the case, "as we are all of the opinion that the confession was admissible, and proper evidence, the ruling of the circuit court on that question must be affirmed. The only effect of the instruction given to the jury was to afford the prisoner's counsel an opportunity of arguing before them that the testimony of Thomas Nicholson was entitled to their belief, and consequently that the confession of the prisoner ought to be discarded from their consideration. The appellant was therefore not injured by the course pursued by the court in this respect, and cannot be entitled to a reversal for that cause." See *Walbrun v. Babbitt*, 16 Wall., 577; *Greenleaf v. Birth*, 5 Peters, 132.

The errors presented by the second and fourth bills of exceptions, also became unimportant in this view of the case.

If the court had ruled out the evidence of Sturgis' conversation with Heurich at the Police Court, as stated in the second exception, instead of admitting it, our decision would remain unchanged.

That interview took place on the Monday following the arrest on Saturday, and could only have been applied by way of reflecting Heurich's antecedent motive when the arrest was made, which would relate to the question of *malice*, and not of probable cause.

So, if the court had admitted the evidence of the plaintiff's good character, as set forth in the fourth exception, the proper decision of the inquiry as to probable cause, in our opinion, should have been as we have already indicated.

The question properly for Heurich's de-

cision before he sued out the warrant, was whether there existed, to his apprehension, after due examination, reasonable ground of suspicion, founded upon the facts and circumstances, to justify him as a cautious man in handing over the suspected person to the public authorities. And it seems clear to us that a man of ordinary mind and caution, upon the presentation of such an array of facts, would have been fully justified in suing out the warrant, notwithstanding he was aware that up to that time the previous character and reputation of the accused had been good. Precious as is a good name, it cannot be endowed with such supreme potency as to place its fortunate possessor beyond inquiry in the presence of circumstances of strong suspicion supported by a connected train of facts, vouched for by men of equally fair repute. If such were to be the rule, the crowd of defaulting treasurers and bank officers of previously unquestioned reputation would enjoy still greater facilities for escaping with their plunder.

The same common sense that should compel a prosecutor to give due weight to the good character of the accused, would also instruct him that a good reputation is often undeserved. Lord Holt's familiar apothegm is but the echo of common human experience: "A man is not born a knave; there must be a time to make him so; nor is he presently discovered, after he becomes one."

Upon the whole case we cannot bring ourselves to question that the plaintiff received substantial justice at the trial. Upon the same evidence, taking out the application to him of the proof of the ownership of the coat, Neil recovered a small verdict. That additional circumstance proved against Coleman may well have turned the scale against him; and we are not surprised that such was the result.

The importance of the various questions so well presented by the counsel has led us into the fullest examination, which has satisfied us that the judgment below should stand.

MR. D. K. SICKELS has resigned his position as head of the Mineral Division of the General Land Office and formed a partnership with Mr. J. R. Randall, late of the same office, under the firm name of Sickels & Randall. The new firm will make a specialty of land and mining law, and will practice before the General Land Office, the Interior Department, and the courts.

Mr. Sickels will continue to furnish the LAW REPORTER with the new and important decisions rendered by the Land Department in land and mining cases.

## Land Department.

Furnished by D. K. SICKELS.

### War Dance Lode vs. Church Placer.

When the existence of the vein or lode in a placer claim is not known at the date of the application for patent for the placer claim the patent for such placer shall convey all valuable mineral and other deposits within the boundaries thereof.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.

WASHINGTON, Feb. 2, 1883.

*The Commissioner of the General Land Office:*

SIR: I have considered the case of The War Dance Claimants v. The Church Placer Claimants, Russell Mining District, Gilpin county, Colorado, on appeal from your decision holding that the lode claimants are not entitled to lode or surface ground lying within the limits of the placer.

The War Dance lode was located some fifteen months subsequently to the entry of the Church placer.

A question of fact is presented as to whether the lode (Survey No. 585) was known to exist within the boundaries of the placer claim at the time of the application for a patent for the placer claim.

This question as to the knowledge of the existence of the lode arises upon the first official survey made by Deputy Locke in 1876. A lode seemed to be indicated upon that plat. It was asserted subsequently by the deputy surveyor, Rank, that what seemed to be a lode upon the plat of such survey "running through the northeasterly part of the placer appeared to be only a porphyry dike which had never been surveyed or claimed by anybody."

On the other hand, it was claimed that the so-called porphyry dike and the War Dance lode were identical.

Such being the state of the question, November 22, 1881, you directed the surveyor-general "to make the proper examination and necessary inquiries to determine the question of identity."

The result of such examination, contained in the report and plat made to the surveyor-general, February 24, 1882, by Benjamin H. Smith, examiner, establishes the fact that such formation, designated as a porphyry dike, is distinct from the War Dance lode, and is evidently, as stated in such report, what seemed to be "the lode mentioned in the original survey of the Church Placer."

As the proof stands, I think it is established that the lode claim known as the War Dance was not known until more than fifteen

months subsequently to the date of the entry of the Church placer claim. But, however, the foregoing question of fact may be found, it is insisted by the War Dance claimants, as the law of the case that if the existence of that lode becomes known at any time before patent is issued for the placer claim, then the lode and the surface ground pertaining thereto must be excluded from the patent.

In the late case of *Becker et al. v. Sears*, I considered the construction which I thought ought to be given to section 2335, U. S. R. S., and held that such section "carves out from a patent to a placer claim all known lodes found therein at date of application, together with twenty-five feet of surface ground on both sides as incident thereto."

The converse of that proposition necessarily follows, viz.: that where the existence of a vein or lode in a placer claim is not known at the date of the application, then the "patent for the claim shall convey all valuable mineral and other deposits within the boundaries thereof."

Your decision, therefore, to the effect that, "as the War Dance claim was not known until long after the date of entry of the placer claim, the lode claimant is entitled to neither lode nor surface ground, within the placer limits, is affirmed.

The papers submitted with your letter of October 3, 1882, are herewith returned.

Very respectfully,  
H. M. TELLER, *Secretary*.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

Chief Justice CARTER and Justices HAGNER and COX present.

FEB. 19, 1883.

*Thos. E. Waggaman v. G. H. Bartlett*. Judgment of Special Term affirmed.

*Frank A. Catharin, use of American Photolithographic Co. v. Eldred G. Davis*. Judgment of special term reversed and remanded for new trial.

*Philip Phillips v. James S. Negley*. Case remanded to Special Term. Appeal dismissed. Plaintiff gave notice that he would prosecute a writ of error; bond fixed.

*Hezekiah Bradford v. Harriet C. Miller et al.* Judgment of special term affirmed.

FEB. 20, 1883.

*Henry Clay Stewart v. Edward G. Elliott*. Argued and submitted.

*The Freedmans Savings and Trust Co. v. Rob't P. Dodge et al.* Ordered that the decree of this court affirmed by the S. C. U. S. be carried into execution.

*Fisk et al. v. Hollander Bros.* Ordered that the complainants show cause on the 29th of February, 1883, why the issuing of injunction should not be stayed and that the injunction be issued in the meantime.

FEB. 23, 1883.

*Louisiana State Lottery Co. v. Thomas S. Morgan*. Ordered to be heard in the first instance. Judgment on demurrer for defendant. Declaration held bad in substance.

#### EQUITY COURT.—Justice James.

FEB. 17, 1883.

*Burch v. Burch*. Sale finally ratified.

FEB. 12, 1883.

*Gallant v. Gallant*. Sale ratified nisi.

*Adams v. Adams*. Guardian appointed ad litem.

*Smith v. Burch*. Decree pro confesso against defendant Sarah J. Foster.

*Smith v. Smith*. Commission to get testimony of non-resident witness ordered.

*Marks v. Main*. Time to take testimony limited.

*Taylor v. Taylor*. Sale of pew finally ratified.

*Potter v. Potter*. Auditor's reports confirmed and distribution ordered.

*Cannon v. Cannon*. Deposition before examiner ordered taken.

*Alley v. Latta*. Title to lots confirmed in complainant.

*Weeks v. Chandler*. Restraining order on filing bond granted.

*Looney v. Quill*. Sale ratified nisi.

FEB. 20, 1883.

*Bibb v. Hunter*. Sale finally ratified.

*McGraw v. McGraw*. Release of bidder and return of deposit ordered.

*Lord v. Lord*. Testimony before examiner ordered taken.

*Ward v. Ward*. Sale ratified nisi and cause remanded to auditor.

*Provest v. Winter*. Referred to auditor.

*Butler v. Scott*. Receiver directed to collect rents.

*Lazenby v. Lazenby*. Rule on defendant returnable Feb. 27, 1883. granted.

*Addicks v. Addicks*. Divorce with alimony granted.

*Burt v. Burt*. Testimony before examiner ordered.

*Evans v. Evans*. Same.

*Perrin v. Perrin*. Same.

FEB. 21, 1883.

*McNally v. Ward*. Appearance of absent defendant ordered.

*McDonald v. McDonald*. Rule on complainant granted returnable Feb. 26, 1883.

*Ware v. Ware*. Same on defendant.

*Riley v. Cox*. Leave to file supplemental and amended bill and to withdraw exhibits granted; restraining order issued.

FEB. 23, 1883.

*Sunderland v. Kilbourn*. Ordered to be heard in general term in first instance.

*McDonald v. McDonald*. Rule on complainant granted returnable Feb. 27, 1883.

*Power v. Power*. Terms of sale modified and private sale authorized.

*White v. Sullivan*. Numan & Wall admitted parties complainant.

*Hickey v. Kepler*. Error in decree corrected.

*Stickney v. Stickney*. Payment into registry of court ordered.

**CIRCUIT COURT.—Justice Mac Arthur.**

FEB. 13, 1883.

In re Henry B. Noble. Motion to be discharged as a juror ordered to be heard in general term in first instance.

FEB. 16, 1883.

L. Johnson & Co. v. Gleason. Judgment by default.

FEB. 17, 1883.

Johnson v. Dist. of Col. Demurrer to declaration sustained and time given to amend.

Hurdle v. Dist. of Col. Demurrer to plea sustained.

Dist. of Col. v. Wash. Gas Light Co. Demurrer to declaration sustained and leave to amend.

Costello v. Knight. Demurrer to amended declaration overruled and leave to plead.

FEB. 20, 1883.

Waters et al v. Shoemaker. Verdict for plaintiff for \$4,131.30.

Bronson v. Knight. Suit discontinued by plaintiff.

Roth v. Jouvenal, ex'r. Non-suit by plaintiff.

FEB. 21, 1883.

Otterbach v. Campbell. Verdict for plaintiff. One cent damages.

Langdon v. Evans. Verdict for defendant \$12,500.

FEB. 23, 1883.

Payne et ux v. Gelser. Verdict for plaintiff for \$5.

Otterbach v. Campbell. Motion for new trial filed.

Hecht v. Goldberg. Verdict for plaintiff for \$75.

**PROBATE COURT.—Justice Hagner.**

FEB. 10, 1883.

Estate of Martha Frazier. Administrator bonded and qualified.

FEB. 12, 1883.

Will of Resin A. Miller. Filed for probate.

Estate of Henry Thorn. Account of sales of part of personality.

Estate of Mathias L. Alig. Inventory of debts due deceased.

In re Wm. Redin Woodward, guardian. Guardian. Guardian bonded.

FEB. 13, 1883.

Will of Peter McGrath. Filed for probate Lewis B. Wynne.

Estate of Sarah L. Bodin. Administrator bonded and qualified.

Estate of Angus A. McDonald. Same.

Estate of Susanna C. Birch. Inventory of executor returned.

FEB. 14, 1883.

Estate of Margaret C. Smith. Executor qualified and bonded lists of debts due deceased returned.

FEB. 15, 1883.

Estate of Thomas Harper. Inventory returned by executrix.

Estate of Helen Batson. Inventory returned by executor.

Estate of Mathias Christlmiller. Executor bonded and qualified.

Estate of Truman A. Cook. Petition of Wm. Galt, with two judgments against deceased filed.

Estate of Clark Mills. Inventory of personality returned by collector.

**The Courts.****CIRCUIT COURT.—New Suits at Law.**

FEB. 14, 1883.

24249. Chas Weeks v. Clayton McMichael. Replevin. Piffs atty, J. McD. Carrington.

24250. Carrie B. Evans v. Duncan S. Cooper et al. Bill of exchange, \$1,500. Piffs attys, Totten & Browning.

24251. Morton D. Banks v. F. G. Schmidt. Account, \$108.11. Piffs attys, Ross & Dean.

24252. John Wanamaker v. Marcus J. Wright. Note, \$281.39. Piffs attys, Ross & Dean.

24253. Leadingham & Co. v. Benjamin Holladay. Acc't., \$143. Piffs attys, Hagner & Maddox.

24254. Amnan Behrend v. Mary E. Chandler et al. Note, \$200. Piffs atty, N. H. Miller.

24255. Elizabeth Pierce v. Timothy Ragan et al. Ejectment. Piffs attys, Worthington & Heald.

24256. George L. Leonard v. Richard J. Hinton et al. Account, \$350. Piffs atty, W. J. Newton.

24257. Mary E. Chandler v. Clayton McMichael. Replevin. Piffs atty, J. McD. Carrington.

FEB. 15, 1883.

24258. The United States of America v. Henry R. Crosby et al. Bond, \$10,000. Piffs atty, George B. Corkhill.

24259. Same v. same. Bond, \$5,000. Piffs atty, same.

FEB. 16, 1883.

24260. Dale, Dutcher & Co. v. Nani Gutman. Replevin. Piffs attys, Albert & Warner.

24261. Marmon Bros. v. John A. Walsh. Check, \$1,500. Piffs atty, H. W. Garnett.

FEB. 17, 1883.

24262. Nana Gutman v. Frederick B. Dale. Damages, \$5,000. Piffs atty, Leon Tobriner.

24263. John H. Wilmot v. Jacob P. Angney. Account, \$353.11. Piffs atty, T. A. Lambert.

24264. James O. Sprigg v. La Fayette Groves. Account, \$312.50. Piffs atty, H. W. Garnett.

24265. Catharine M. B. Jones v. William Carney. Replevin. Piffs attys, Elliot & Robinson.

24266. Teft, Weller & Co. v. Nani Gutman. Account, \$1,342.22. Piffs attys, Horner and Bell.

24267. Seaton Perry et al. v. Mary Chenoworth. Judgment of Justice Walter, \$37.60. Piffs atty, R. E. Perry.

FEB. 19, 1883.

24268. Price & Heald v. William H. Baldwin. Note, \$190. Piffs attys, Worthington & Heald.

24269. William Wagner v. William M. Lee. Judgment of Justice Bundy. Piffs atty, C. Felham.

FEB. 20, 1883.

24270. John Barns v. Margaret Welsh. Judgment of Justice Richards, \$75.

24271. George F. Seward v. Owen N. Denny. Account, \$2,587.60. Piffs attys, Ashton & Wilson.

24272. Robert O. Holtzman v. Eleanor N. McGowan. Account, \$287.36. Piffs atty, N. Wilson.

**IN EQUITY.—New Suits.**

FEB. 15, 1883.

24265. Margaret Collins v. Walter C. Johnson. For injunction. Com. sol., C. W. Glasie.

FEB. 17, 1883.

24266. John L. Bell v. Rachel Wilkinson et al. For partition. Com. sol., B. F. Leighton.

24267. Allen Paine et al. v. John J. Cook et al. Judgment creditors' bill. Com. sol., J. F. Riley.

24268. Wm. O. Wood et al. v. James Hill et al. Injunction. Com. sols., Hunton & Chandler.

24269. Charles Weeks v. Clayton McMichael. To enjoin, &c. Com. sol., Thos. F. Miller.

FEB. 20, 1883.

24270. Mary E. Pickrell et al. v. Annie G. Hume et al. Com. sols., Gordon & Gordon.

24271. Annie G. Hume v. Mary E. Pickrell et al. To account of stock. Com. sols., Gordon & Gordon and E. Totten.

24272. Maria Berry v. Mary A. Byrne et al. Com. sols., Jones and Miller.

**Legal Notices.****THIS IS TO GIVE NOTICE,**

That the subscriber, of Montgomery County, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert H. Wyman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1883.

CHARLES ABERT, Executor.

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Resin A. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1883.

THADDEUS BEAN, Executor. 8-3

WM. H. DENNIS, Solicitor.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mathias Christmillier, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1883.

ANTON RUPPERT. 8-3

F. MILLER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the matter of the Estate of John E. Clark, late of Washington, D. C., deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John Jay Knox, Commissioner of Freedmen's Savings and Trust Company.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills. 8-3

FRANK T. BROWNING, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the matter of the Will of Maria Benter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by W. L. Crooker.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills. 8-3

E. C. WEAVER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the matter of the Will of Peter McGrath, late of the District of Columbia, deceased.

Application for Letters Testamentary on the estate of the said deceased has this day been made by Daniel Hannan. All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills. 8-3

Jno. F. ENNIS, Solicitor.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Henderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of February, 1883.

HELEN B. HENDERSON,

MARY E. HENDERSON.

WM. G. HENDERSON, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES T. WARD ET AL. } No. 3,304. Equity.

EDITH WARD ET AL. }

James S. Edwards, the trustee herein, having reported a sale of a part of the lots 2 and 3, in the square 294, containing 1,200 square feet of ground, to William B. and Robert Downing, assignees of Daniel J. Macarty, for the sum of \$1,188, also of a part of the said lot 3, in said square, containing 2,028.88 square feet of ground to the said Daniel J. Macarty, for the sum of \$1,642.81, and which said several parts of said lots, are more particularly described in the report of said trustee and the proceedings in this cause:

It is, this 20th day of February, A. D. 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 21st day of March, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

LOONEY } No. 3,034. Equity.

QUILL ET AL. }

CONSOLIDATED.

AND } No. 3,183. Equity.

QUILL }

LOONEY ET AL. }

R. Byrd Lewis and Wm. Pierce Bell, trustees herein, having reported a sale of parts of lots (13) thirteen and (14) fourteen, in square (624) six hundred and twenty-four, being the east (8), feet front of lot (14) fourteen, and the west (8) eight feet front of lot (13) thirteen, the two parts forming a front on north G street, of (16) sixteen feet and running back with even width one hundred and twenty-four (124) feet; to Dennis Quill, for \$1,500:

And also that the rear part of said parts of lots (13) thirteen and (14), in square (624), six hundred and twenty-four, having a width of (16) sixteen feet and a depth of fifty-one (51) feet and three (3) inches, was sold to Dennis Quill, by them for \$625:

And also a sale of the western part of lot numbered (2) two, in square (679), six hundred and seventy-nine, to Daniel Baldy, for \$625; and that the purchasers of the several parcels have complied with the terms of sale as stated in said report:

It is, this 19th day of February, A. D. 1883, ordered, by the court that the said several sales be and the same are hereby ratified and confirmed unless cause to the contrary be shown on or before the 23d day of March, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of February, 1883.**

VALENTINE McNALLY } No. 3,407. Eq. Doc. 22.

ELIJAH J. WARD ET AL. }

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, Elijah J. Ward and Sarah E. Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test: 8-3 E. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Angus A. McDonald, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1883.

ANDREW A. LIPSCOMB,  
Administrator 321 4½ street, n. w.

7-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Clare Smith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of February, 1883.

WALTER C. SMITH, Executor.  
ARTHUR T. BRICE, Solicitor.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah L. Boden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1883.

GEORGE C. BODEN, Administrator.  
RANDALL HAGNER, Solicitor.

7-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration w. a., on the personal estate of Martha Frazer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1883.

DAVID BLAIR, Administrator w. a.  
JOHN N. OLIVER, Solicitor.

7-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Susanna O. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

JOSEPH S. BIRCH, Executor.  
HANNA & JOHNSTON, Solicitors.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the case of George P. Zuerhorst, Administrator of Harriet Park Phisak, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 7-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 16, 1883.**

In the case of Lambert Tree, Executor of Lambert Tree, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
WM. F. MATTINGLY, Solicitor.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of February, 1883.**

ROBERT DAVIDSON AND OTHERS } No. 8,454. Eq. Doc. 22.

WM. E. PRALL AND OTHERS.

On motion of the complainants, by Messrs. Riddle, Davis and Padgett, their solicitors, it is ordered that the defendants, William E. Prall and Julia L. Prall, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. February 12, 1883.**

CHARLES RINEHART } No. 8,367. Equity Docket 22.

SALLIE E. RINEHART.

On motion of the petitioner, Charles Rinehart, by William F. Mattingly, his solicitor, it is this 12th day of February, A. D. 1883, ordered that the defendant, Sallie E. Rinehart, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to said day, the first publication thereof to be not less than forty days before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 7-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 9, 1883.**

In the matter of the Will of Eliza Boid, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by John H. Brooks.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
H. T. WISWALL, Solicitor.

7-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 9, 1883.**

In the matter of the Will and Codicil of Emeline Carter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Dorsey E. W. Carter.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
H. O. & R. CLAUGHTON, Solicitors.

7-3

# Washington Law Reporter

WASHINGTON - - - - - March 10, 1883

GEORGE B. CORKHILL - - - EDITOR

## Repeals by Implication.

The opinion of Mr. Justice WOODS, of the Supreme Court of the United States, in the case of the Town of Red Rock v. Henry (No. 134, October Term, 1882), collates as follows from the former decisions of the court, the rules and principles which will govern the determination of the question, when, in the absence of express words of repeal, one statute repeals another by implication.

If it be possible to reconcile the two statutes one will not be held to repeal the other (*McCool v. Smith*, 1 Black, 459), and the leaning of the courts is against repeals by implication (*United States v. Tynen*, 11 Wall., 88); the repeal by implication must be by "necessary implication, for it is not sufficient to establish that subsequent laws cover some or even all the cases provided for by it, for they may be merely affirmative or cumulative or auxillary" (*Wood v. United States*, 16 Pet., 342). It is when the later act plainly shows that it was intended as a substitute for the former act that it will operate as a repeal of that act. (*U. S. v. Tynen*, *ubi supra*.)

When the powers and directions under the several acts are such as may well subsist together an implication of repeal cannot well be allowed (*Henderson v. Tobacco*, 11 Wall., 652). While repeals by implication are not favored, it is well settled that when two acts are not in all respects repugnant, if the latter act covers the whole subject of the earlier, and embraces new provisions which plainly show that the last was intended as a substitute for the first, it will operate as a repeal (*King v. Cornell*, present term, and see also *Murcock v. Memphis*, 20 Wall., 590).

The conclusion of the court from these authorities is that when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it, unless the two acts are in irreconcilable conflict, or un-

less the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest.

THE OHIO LAW JOURNAL notes a case which was recently tried in the Court of Common Pleas of Mercer county in that State, and which involved some novel and interesting issues of a legal and medical nature.

The declaration claimed damages for breach of promise of marriage; the defendant, among other things, set up by way of defense that, after the alleged promise, a fibroid tumor or polypus grew or was developed in the uterus or womb of the plaintiff, which was four inches in diameter, and which so diseased the plaintiff that she was rendered incapable of bearing offspring with safety, and was unable, with safety, to perform all the duties of the marital relation, and that consequently he was not bound to marry her. (2 *Parsons on Contracts*, 65; 1 *Wait's Actions and Defences*, 725; 2 *Chitty*, 795 and 86 *North Carolina*.) Replication that the tumor or polypus which so grew in the the uterus of the plaintiff was caused by the defendant, by reason of his long and continued courtship with her.

The physicians, some eight in number, upon the trial, were divided in opinion as to whether the usual courtship that takes place between parties prior to and after betrothal would or could have a tendency to produce fibroid growths in the uterus or womb. How the jury resolved the matter does not appear.

THE LONDON LAW JOURNAL states by authority that Mr. Judah P. Benjamin, Q. C., has retired from the practice of his profession and that the step is taken on the advice of his physicians, who are of the opinion that Mr. Benjamin can no longer undergo the fatigue and excitement of arguing causes without grave prejudice to his health. It adds that "in the space of fourteen years Mr. Benjamin had reached the highest eminence at the English Bar and his retirement is the close of one phase of a very remarkable career."



## Supreme Court District of Columbia

JANUARY TERM, 1882.

REPORTED BY FRANKLIN H. MACKAY.

WAGGAMAN v. BARTLETT.

Law. No. 23,675.

{ Decided February 19, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

The tenant may contract with his landlord to quit on shorter notice than thirty days, notwithstanding the provisions of the Landlord and Tenant's Act of the Revised Statutes of the District of Columbia.

THE CASE is stated in the opinion.

HUGH T. TAGGART for plaintiff:

In the case at bar the court below ruled, "that it was not competent for the plaintiff to show an agreement with the defendant, under the terms of which the tenancy of the defendant, could be determined by the service of a three days' notice to quit, where default should be made in the payment of rent, that such an agreement would be in contravention of the statute, against public policy, and void; that the statute required a notice of thirty days, and that the parties could not contract for a shorter notice."

The right of a landlord to protect himself against an unrequited occupation of his premises by a party who takes possession as a tenant under an agreement to pay rent, is an incident of the *jus disponendi*; in availing himself of it it is difficult to see wherein he violates any rule of public policy. It would seem to be more consonant with equity and good morals that the tenant should not be allowed, as in the present instance, for months to hold the property without rendering compensation.

The ruling above quoted, it is respectfully submitted, is based upon a fundamental misconception of the purport of the sections of the Revised Statutes of the District of Columbia relating to landlord and tenant; obviously, with a single exception, these sections do not affect in any way express contracts; on the contrary express contracts are expressly excepted from the operation of the act.

The exception referred to is that of tenancies at will arising under the act through express contract; these may be determined like the tenancies by implication provided for in the act by a notice of thirty days.

In the case at bar the plaintiff showed an express contract (that is a contract of letting which was expressly agreed to by the parties),

and the tenancy was determined agreeably to its provisions. He was, therefore, entitled to the benefit of the summary remedy provided for such cases by section 684 of the statutes.

For a clear analysis and exposition of the provisions of the sections of the Revised Statutes relating to landlords and tenants, see article of Mr. Perry in 4 Wash. Law Rep., 220, from which it appears beyond question that they have no reference to express contracts.

Notice to quit is never required where the parties have, by mutual agreement, fixed the terms on which the lease is to terminate; the lessee may waive the right to require notice, and, for the same reason, the right never arises where a lease for years expires by its own limitation, or the parties have otherwise made an end of it. *Conventio vincit legem*. Allen v. Jaquish, 21 Wend., 631.

It follows that a new trial should be awarded.

HINE & THOMAS for defendant.

Bartlett was a monthly tenant. His tenancy had been forfeited by default in the payment of rent, he was then a tenant at will, and it remained only for Waggaman to turn him out, on a thirty days' notice to quit, as provided in the statute. R. S. D. C., sec. 684.

The object of the statute being to protect the family of the tenant, its provisions therefore, like those provisions of the law relating to exemptions in favor of debtors in this District, cannot be waived. The agreement in this case, is entitled to a place in the first rank among those agreements commonly called "cut throat" agreements. All rights are reserved to the landlord, none to the tenant, except to move out in three days if, perhaps by accident, he should fail to pay his rent. This court, construing the statute relating to the goods of a debtor exempted from execution, has held that the debtor could not waive the statutory provisions in his favor. On the same principle, we submit, the waiver of thirty days' notice to quit in this case is void.

The stipulation of Bartlett that on default in the payment of rent Waggaman might on a three days' notice to quit proceed to put him out is unreasonable. To give effect to it would be, we submit, to give landlords a remedy in such case more summary than that given by the statute. It is in contravention of the statute. It is against public policy as affecting the relation of landlord and tenant, and void.

The court below was plainly right, and the judgment should be affirmed.

Mr. Justice Cox delivered the opinion of the Court:

This was originally a case before a justice of the peace to recover possession of certain premises which, the complainant claimed, were held by Bartlett, the defendant, as tenant under him. At the hearing, the defendant appeared and denied that he held the premises as alleged and alleged title in others under whom he held. Bonds were then entered into by both parties in the usual form, and the case was certified to the court agreeably to the act of Congress. At the trial it was proved on the part of Waggaman, that the defendant occupied the premises described in the papers as tenant, and had paid rent to him for some months, and finally was in default for some months, and on the 20th of March, he served him with a notice to quit, in writing, within three days, according to the terms of the agreement in writing between the parties, which was itself offered in evidence. The agreement thus offered purports to be an instrument signed and sealed by the defendant in which he agrees to hold the premises as tenant, under Waggaman, and pay rent at the rate of one hundred dollars for each month that he shall continue tenant on the premises, there being no term of tenancy specified. That agreement also contains this provision:

"And it is further provided as conditions of my tenancy hereunder that if any months' rent shall not be paid when the same shall be or become due and payable as hereinbefore provided, or if any breach shall be made in any other of the covenants on my part herein contained, then, or at any time thereafter, it shall be lawful for the said Thomas E. Waggaman to terminate this tenancy by a notice to quit in writing of three days, which notice may be served on me in person or by leaving a copy of the same on the said premises; and upon the expiration of the said notice the said Thomas E. Waggaman shall be entitled to the immediate possession of said premises and my tenancy hereunder shall immediately cease and determine."

The defendant objected to the admission of this agreement on the ground that it was signed by only one party. And the court sustained that objection at first. I am unable exactly to comprehend the ground on which the court made this ruling, because any promise which is sustained by a sufficient consideration, I take to be a valid promise although it is not signed by the promisee also. All promissory notes are of this description. All agreements or memoranda of agreements under the statute of frauds may

be signed by one party, and are not necessarily to be signed by more than one party, and I take it that whether an instrument be under seal or not, if sustained by a sufficient consideration it is binding and should be received in evidence though signed only by the party sought to be charged. To pass from this point; after this ruling the plaintiff offered the instrument in evidence as tending to show what the parol agreement between the plaintiff and the defendant was, in regard to the term of his tenancy, and for that purpose it was admitted. When it was read, the court immediately ruled that it was not competent for the plaintiff to show an agreement with the defendant under the terms of which the tenancy of the defendant could be terminated by a three days notice to quit when default in payment of rent should be had; that such an agreement would be in contravention of the statute and against public policy and void; that the statute required thirty days notice, and the parties could not contract for a shorter notice, and directed the jury immediately to find a verdict for the defendant. So that, the simple question presented here is, whether a landlord and tenant may contract that the tenant shall quit on shorter notice than thirty days.

In order to determine this point it may be well to consider what the state of the law was before the statute passed. Originally, if a man leased his land for a term not certain, it was called a lease at will, and if he held over a certain term, he was a tenant at sufferance. In the course of time, in the interest of agriculture, the courts created a new tenancy out of these called a tenancy from year to year. In other words, they held that where a man leased land generally, it should be held to be a lease from year to year until terminated by a half year's notice to quit. Where the tenant held over after the expiration of his lease, and where the landlord recognised him as a continuing tenant by receiving the rent, the courts held that to be the same thing—a tenancy from year to year—the principal feature of which tenancy was that it was to be terminated with a notice of half a year to quit ending with the current half year. But it was never understood, and we have found no decision intimating such a thing, that this rule as to notice to quit interfered with any convention between the parties themselves. The rule is stated by Archbold on Landlord and Tenant, page 86, as follows:

"A notice to quit is required by law, or by local custom, or by express stipulation between the parties. In the latter case the notice must be such as has been agreed upon,

whether the same would be required by law or be sufficient if no such stipulation existed or not," and a number of cases are cited on this point. It continues: "And, therefore, if it be agreed between the parties that the tenant shall quit at a quarter's notice, of course a quarter's notice only is necessary. Where it is required by local custom, the custom will be considered as engrafted upon and forming part of the contract between the parties, and must be complied with. In the absence of express stipulation or local custom upon the subject, if a tenant holds his land or house, &c. from year to year expressly or impliedly, either the landlord or he may determine the tenancy by giving a half year's notice to quit."

That was the condition of the law, then, when this statute was passed; that in the absence of an express stipulation, a general letting, that is a letting having no definite term, could be terminated by notice to quit of one-half year, or any other notice that the parties themselves should agree upon. The letting in this particular case comes within the description of a general letting because no particular time is fixed. The defendant agreed to hold and pay so much rent as long as he should continue tenant of the premises.

Now our landlord and tenant act takes hold of the two very cases which I have mentioned, which would amount to tenancies from year to year at common law. It says, sec. 5:

"All occupation, possession, or holding of any messuage or real estate without express contract or lease"—that is in one case, and "or by such contract or lease the terms of which have expired—that is, the other case—shall be deemed and held to be tenancies by sufferance."

The first case is one which I mentioned before, where there is no express contract or lease fixing the term of the tenancy. And the second is where a party holds over by a contract the terms of which have expired. The meaning of that is, that where he has an express lease or contract, and the term has expired, he holds over under the same terms and conditions contained in the lease which has expired. In these two cases the law declares that there shall be a tenancy by sufferance. Then it goes on to provide that all estates at will and sufferance may be terminated by notice to quit of thirty days, &c. In other words, it says that those cases, which, at common law, would be called estates from year to year, shall hereafter be called by a new term, that is, estates by sufferance, but that whereas in common law they could only be determined, in the absence of

express contract, by a half year's notice to quit, thenceforth they may be determined by thirty days' notice to quit. In both cases supposed, there is no express contract as to the notice to quit. Of course if a party holds without any express contract or lease there is no notice required; or if he holds according to the terms of the lease which has expired, the same thing may be remarked. Because where a definite term is fixed, as in this case, there is never any notice to quit or stipulation for any notice to quit; and, particularly there would not be any stipulation in a definite lease, for notice to quit after the lease had expired and during that time to which it did not apply.

So that both the cases to which this statute applies, and in which it provides that thirty days notice shall be sufficient, are cases where there was no express contract at all as to notice. The statute, therefore, does not provide any rule for the case of an express agreement between the landlord and tenant as to the time of notice to quit. It does not profess to act upon that case at all, and contains nothing which, by necessary implication, interferes with the entire control of the parties over this subject. That being the case, we are unadvised that there is any authority, and we do not see that there is any rule of law, for the proposition that a landlord and tenant may not stipulate between themselves as to the length of notice to quit. It was put upon the ground of public policy in the court below. Well, the same thing may be said of a half-year's notice to quit at common law. That was a rule of public policy in the interest of agriculture, so that the tenant should not be ejected without an opportunity to harvest his crops, &c. Yet that rule does not interfere with the right of the parties to modify the contract by rule among themselves. In argument, it was likened to an exemption law, which not only protects the property from the creditors, but from a party's own acts. A case was cited from New York, well reasoned, in which it was held that the tenant could not relieve himself of this privilege of exemption; and it was argued, by parity, that this was a case of that sort; that the party should not be allowed to bind himself to leave on less than thirty days' notice, and ought not to be allowed to contract himself out of that privilege or exemption. But there is this manifest difference. An exemption law protects a man from the seizure of his own property by his creditors; it protects his household. In that New York case it was held to protect him from his own contract subjecting his property to the claims of creditors. But

no exemption law, or rule of public policy, which we are acquainted with, entitles a man to retain possession of any other man's property. Where a man has a lease for a definite term, that lease is the limit of his interest in that property. Every day beyond that time that he occupies it is an encroachment upon the property of another person, that is, his landlord. So, if a man agrees to vacate property when his landlord shall require it after an agreed notice, or without notice—one day's notice or ten—any occupation of that property beyond the period stipulated, is the occupation of his landlord's property and not his own. We are unable to see why the tenant cannot stipulate to give up another person's property generally, and, *a fortiori*, why he cannot stipulate that if he does not pay the rent he will vacate the premises within a given time.

For these reasons we think the ruling of the court is erroneous on this point. That is the only point presented in the bill of exceptions. The plaintiff is entitled to a new trial.

## United States Supreme Court.

No. 141.—OCTOBER TERM, 1892.

THE UNITED STATES, ON BEHALF OF DAVID D. Porter and others, officers and men of the North Atlantic Squadron, Appellants.

v.

THE STEAM VESSELS OF WAR SEABOARD, Texas, Beaufort, and others.

*Appeal from the Supreme Court of the District of Columbia.*

### STATEMENT.

This was a proceeding termed a libel of information filed in the Supreme Court of the District of Columbia on behalf of the admiral and officers and men of the North Atlantic Squadron to recover the bounty provided by the act of Congress of June 30th, 1864, regulating prize proceedings and the distribution of prize money. (13 Stats. at Large, 306.)

The eleventh section of that act declares "that a bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which shall be sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or

superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which shall be immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The libel, in substance, alleges that between the 8th of October, 1864, and the 28th of April, 1865, the North Atlantic Squadron, consisting of eleven ships of war—which are mentioned—was under command of David D. Porter, now admiral of the navy; that by orders of the President of the United States and of the Secretary of the Navy, he ascended the James and York rivers, in Virginia, with the vessels composing his squadron, for the purpose of expelling the naval and military forces of the Confederate States from those waters, and to assist in the capture of Richmond; that previously to April 1st, 1865, the Confederates, in order to obstruct the passage of the vessels, had erected along those rivers batteries and other means of defense; had caused boats to be sunk in the streams and trees to be filled in and across them; and had placed in the James River, in support of the defenses of Richmond, many armed steam batteries, steam rams, iron-clad ships of war, and armed steamers, of which eleven are mentioned by name; that the fleet removed the obstructions from the river, attacked the naval forces of the Confederates, destroyed some of the vessels, and caused the enemy to destroy others to prevent them from falling into the possession of the United States, and that nine vessels, which are named, were thus destroyed.

The libel further alleges that the vessels of the enemy, aided by the guns of the batteries and the obstructions in the river, constituted a superior force to that under the command of Admiral Porter; and claims that by the act of Congress of June 30, 1864, cited above, the officers and men of the squadron were entitled to a bounty of two hundred dollars a head for each man on the enemy's vessels at the commencement of the engagement. It therefore prays that such bounty may be allowed to them; and that in estimating the numerical strength of the enemy the court will take into consideration and adjudge that all per-

sons engaged on land, as well as those on the water, in resisting the United States naval forces in that engagement, may be held to have been on board of the enemy's vessels, and treated as adjuncts to them; and, furthermore, as it will be difficult, and in some instances impossible, by reason of the lapse of time and from other causes, to show the number of men that were on and about the enemy's vessels when the engagement commenced, the libel prays that such forces may be estimated according to the complement of men allowed to vessels of the same capacity in the navy of the United States.

Upon this libel process was ordered to be issued to the Secretary of the Navy, notifying him of the commencement of the suit; and subsequently testimony in the case was taken and such proceedings were had as resulted in a decree in favor of the libellants, by the Supreme Court of the District of Columbia, sitting in admiralty, and held by a single justice. The case being subsequently carried before the full court, the decree was reversed and the libel dismissed.

From the decree of dismissal the case is brought by appeal to this court.

Mr. Justice FIELD delivered the opinion of the court as follows:

Two objections are made to the recovery of the bounty claimed by the libellants; one, that the destruction of the Confederate vessels was effected by the joint action of the army and navy; the other, that it took place on the inland waters of the United States.

For the determination of the first of these objections it will be necessary to consider the movements of the fleet under command of Admiral Porter, immediately preceding the capture of Richmond. The record enables us to do this, although officers present on the vessels differ in their recollection of dates.

On the morning of April 2d, 1865, General Lee, commanding the enemy's forces around Richmond, informed the Confederate authorities that he should immediately withdraw his lines and evacuate the city. The withdrawal and evacuation took place on the evening of that day. Information of his purpose was undoubtedly communicated to Admiral Porter soon after it was generally known in Richmond, which was before noon. At that time there were in James river, for some miles below Richmond, obstructions which the Confederates had placed to prevent the ascent of the Union fleet. Vessels filled with stone had been sunk and numerous torpedoes planted in the stream. Batteries had also been erected along the river. Some of the obstructions were just above the lower end of what was

known as Dutch Gap Canal, about sixteen miles by the river from Richmond, which were originally placed there by the Confederates, and afterwards maintained by the forces of the United States. Two miles above them was Howlett's Confederate battery. Eight miles above the Dutch Gap Canal was Chaffin's Bluff, and one mile above that on the opposite side of the river was Drury's Bluff, seven miles below Richmond. General Lee's lines extended across the river between the two bluffs, and below them. Above the obstructions near Dutch Gap Canal several Confederate vessels of war were stationed. When General Lee was compelled to abandon his lines orders were given that the batteries on James river should be withdrawn and the Confederate vessels destroyed.

As soon as Admiral Porter, on the 2d of April, was informed, or had reason to believe that General Lee intended to retreat from Richmond, he gave orders for the removal of the obstructions in the river, and for his vessels to open fire on the Confederate batteries within range, and to push on through the obstructions as fast as they were carried away, first sending boats ahead to remove the torpedoes. These orders were carried out with great gallantry and spirit; a heavy fire was opened on the batteries, and during the following night a channel was cut through the obstructions. Soon after the fleet opened fire the enemy, to prevent the capture of his vessels, commenced destroying them, setting fire to some of them and blowing up others. On the next day, the 3d, the fleet passed through the obstructions and moved up to Drury's Bluff, capturing one of the enemy's vessels which had not been destroyed—the iron-clad ram Texas. Another of the enemy's vessels—the Beaufort—was subsequently captured further up the river. At Drury's Bluff the vessels were detained by the obstructions until the 4th. On that day the Admiral, accompanied by President Lincoln, proceeded up to Richmond.

Although, in the movements of the Admiral's fleet in its ascent of James river, and in its attack on the batteries, he was not assisted by the actual presence of any portion of the army of the United States, so that the capture of the two vessels—the Texas and the Beaufort—and the destruction of the other vessels, may, in that sense, be said to have been effected by his fleet alone, yet, without the aid of the army the result mentioned would not probably have been accomplished. Certainly its movements contributed most essentially to the success of the fleet. For several months it had been lying near Richmond under the

command of General Grant, with the avowed purpose of capturing that city and of destroying the Confederate forces. The result of the battle of Five Forks, on the 1st of April, satisfied the Confederate commander that he could not hold his lines and protect Richmond. The withdrawal of his troops and the evacuation of Richmond followed. Had they not been thus forced to retire and his lines had continued to cross James river between Chaffin's Bluff and Drury's Bluff, it would have been almost, if not quite, impossible for the fleet of Admiral Porter to ascend the river. The fire of the shore batteries, with the assistance of the Confederate troops near by, would have checked any advance, supported, as they would have been, by the Confederate vessels and the torpedoes in the stream. It is plain, therefore, that whatever was accomplished by the fleet of the Admiral in James river on the 2d and 3d days of April, 1865, must be considered as the result of the co-operative action of both the army and the navy. It matters not that the movements of the army were miles distant from the operations of the fleet. They relieved that fleet from resistance which might and probably would have defeated any attempt to ascend the river above the shore batteries, and destroy the armed vessels of the enemy.

Prize money, or bounty in lieu of it, is not allowed by the laws of Congress where vessels of the enemy are captured or destroyed by the navy with the co-operation of the army. To win either, the navy must achieve its success without the direct aid of the army, by maritime force only. No pecuniary reward is conferred for anything taken or destroyed by the navy when it acts in conjunction with the army in the capture of a fortified position of the enemy, though the meritorious services and gallant conduct of its officers and men may justly entitle them to honorable mention in the history of the country. *The Siren*, 13 Wall., 389.

The second objection to a recovery, that the destruction of the Confederate vessels was effected upon inland waters of the United States, is equally clear, if the term "property" used in the seventh section of the act of 1864 can be construed—as counsel seem to take for granted—to embrace public vessels of the enemy. That act provides, among other things, for the collection of captured and abandoned property, and is in addition to the act on that subject of March 12, 1863. (13 Statutes at Large, 377; 12 *Ibid.*, 320.) The seventh section declares: "That no property seized or taken upon any of the inland waters of the United States by the naval

forces thereof, shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts, or as provided in this act and in the said act approved March twelve, eighteen hundred and sixty-three."

The term "inland" as here used was evidently intended to apply to all waters of the United States upon which a naval force could go, other than bays and harbors on the sea coast. In most instances property of the enemy on them could be taken, if at all, by an armed force without the aid of vessels of war. These were seldom required on such waters, except when batteries or fortified places near them were to be attacked in conjunction with the army. As observed by the court in the case of *The Cotton Plant*, Congress probably anticipated, in view of the state of the war when the act was passed, that most of the captures on the rivers would be made by the army. 10 Wall., 577.

James river is an inland water in any sense which can be given to the term "inland." It lies within the body of counties in Virginia. For miles below Richmond, and below the obstructions mentioned a person can see from one of its banks what is done on the other. Rivers across which one can thus see are inland waters. It matters not that the tide may ebb and flow for miles above their mouths; that fact does not make them any part of the sea or bay into which they may flow, though they may be arms of both. *U. S. v. Grush*, 5 Mason, 290.

Decree affirmed.

#### Eviction Necessary to Suit on Warranty.

ESTATE OF GEORGE GROFF, DECEASED.

#### Warranty—Breach of—Counsel Fees.

A warrantor, or his estate, cannot be held liable for damages, counsel fees, or expenses where there has been no breach of warranty, or where there has been no eviction suffered by the warrantee.

Exceptions to report of auditor.

Opinion by LIVINGSTON, P. J. February 24, 1883.

We have examined the report, the testimony and the authorities cited on argument, and are satisfied that the learned auditor has not erred with reference to the matters specified in the first, third and fourth of the exceptions first filed, and in the first of the supplemental exceptions filed. Those exceptions are therefore dismissed.

The second exception, or alleged error, reads thus: "The auditor erred in allowing

accountant \$744 of the credit of \$1,250 attorney's fee."

It appears, from the evidence and report, that, during the life of George Groff, he sold and conveyed to his son, Solomon C. Groff, the present accountant, a farm containing 104 acres and 13 perches, in the township of Upper Leacock, Lancaster county, the deed containing the usual *general warranty*. Some time after which said George Groff made his last will and testament of which he constituted his son, Solomon C. Groff, the sole executor.

- George Groff, the testator, died June 8, 1880. After his decease Christian O. Groff brought an action of ejectment against Solomon C. Groff, in the Court of Common Pleas of Lancaster county to September Term, 1880, No. 34, the writ having been issued on August 26, 1880, to recover possession of the farm so sold by George Groff to Solomon C. Groff. The suit was against him individually. After suit was entered against him, Solomon C. Groff entered into a written agreement with counsel, paying them \$50 as a retaining fee, and agreeing to pay them \$200 for any trial of the cause, and the further sum of \$1,000 in the event of their defeating the ejectment before any tribunal having jurisdiction thereof, or otherwise obtaining an acquittance. On the back of the agreement there is endorsed a receipt for the payment of the \$1,250.

The cause was arbitrated on November 21, 1881. The award was "*no cause of action*." From this award plaintiff took an appeal, and on the 13th day of February, 1882, the plaintiff suffered judgment of *non suit* in open court, and judgment was entered of record accordingly, and the case was thus terminated.

There was no paramount legal title shown; no title of any kind, so far as the evidence or report shows, produced by Christian O. Groff, the plaintiff in the ejectment; no judgment entered in his favor; no *eviction*, either actual or constructive of Solomon C. Groff, the defendant therein. There was no *breach of the warranty* of George Groff shown, and the title of Solomon C. Groff to said farm is just as good as George Groff, by his general warranty, declared it to be—*without spot or blemish*.

The agreement with counsel he made and signed in his individual capacity, and there is nothing on the record of the action to show that he defended in any other capacity.

If George Groff, the warrantor, were living, could Solomon C. Groff, the grantee, under the facts stated and found by the auditor, recover the money thus paid counsel from him in an action for breach of his warranty? He being dead, can he recover it from his

estate? This is in effect, an action on the warranty for its recovery.

"It is said the liability of an executor differs from that of the heir, in that while the latter is not bound by his ancestors' covenants, unless named in them, a contrary rule prevails as to the former. Nor can a distinction prevail between the liability of an executor upon covenants broken after the testator's death and those broken before that event." Rawle Cov. for Title, §§ 592 and 593 and note. But, it will be observed, that in either event there must be a breach of the covenant or warranty before any liability attaches to either warrantor or executor.

As early as the year 1826 the Supreme Court of Pennsylvania held that when a man purchases, and has a general warranty in his deed, he may, when ejectment is brought against him for the land, or part of it, give notice to the warrantor to appear and defend the suit; and if notice is duly given, and he does not defend, the record of the recovery is conclusive evidence against him in an action of covenant on the warranty. But if the vendee gives no notice but appears and defends, it has not been allowed him to recover counsel fees paid and his own expenses, for there may be no ground of defense, and he shall not subject his vendor, without his knowledge and against his will, to more than he is liable to on his covenant of warranty. In the case then before the court the title had been found to be defective and a breach of warranty shown. 15 S. & R., 55.

In a later case the same court says: "We have no difficulty in saying that a judgment in ejectment, without more, is not an eviction which will sustain an action on the covenant of warranty of title. The eviction must be laid in the declaration and proved." 3 W. & S. 407-10.

And in still later cases the court said: "That to maintain an action for a breach of warranty, an *eviction must* be laid and proved, not necessarily by judicial process, or the application of physical force, but by the *legal force* of an irresistible title. There must be proof at least, of an involuntary loss of possession." 2 Jones 79. 10 Wr. 229.

The mere existence of paramount hostile title does not constitute eviction: 30 Amer. Rep., 562.

In Terry v. Drabenstadt notice had been given to warrantor's executor; he did not appear to defend; the covenantee employed counsel and defended; there was an eviction by lawful title; this court awarded to the covenantee the fee paid by him to counsel, and, on error, the Supreme Court reversed the

court below on that account. 18 Sm., 400.

We have not been able to find any case reported, nor was there any cited by counsel on argument, in which a warrantor, or his executor or estate, has been held liable for damages, counsel fees or expenses, where, as in the case before us, there has been no *breach of warranty* shown, no paramount title produced; where the action of ejectment was abandoned by the plaintiff therein and no eviction, either actual or constructive, suffered by the warrantee. We are, therefore, of opinion that the learned auditor erred in awarding to Solomon C. Groff, the covenantee, \$744, part of the \$1,250 paid his counsel in said ejectment suit, and that the exception taken thereto (exception 2d) must be sustained.

With reference to exception No. 5 and supplemental exception No. 2, both embrace the same subject matter—costs of auditor. From the exceptions filed to the account, as found in the report of the auditor, it appears that all of said exceptions relate to claims made by the executor against the estate, or charge him with dereliction of duty as executor, and on that account this audit was rendered necessary, and the result has been that the accountant is largely surcharged. The auditor has directed the whole cost of the audit to be paid out of the estate. In so doing we think the learned auditor erred, and that, under the testimony presented to him and the facts as he has found them, he should have divided the costs, in equal portions, between the estate and the accountant, which we now do. Said exceptions are sustained to this extent and the accountant surcharged with \$65, one half of said costs.

The report of the auditor we therefore correct in accordance with this opinion by adding to the balance found by the auditor in hands of accountant, \$8,956.46; the sum allowed by auditor as counsel fee in ejectment suit, \$744; also, half costs of auditor \$65—\$809. Real balance in accountant's hands, \$9,765.46. With these alterations and corrections the report of the learned auditor is confirmed absolutely. [Orphan's Court of Lancaster Co., Pa.]

—Lancaster Bar.

WHOEVER considers the number of absurd and ridiculous oaths necessary to be taken at present in most countries, on being admitted into any society or profession whatever will be less surprised to find prevarication still prevailing where perjury has led the way.—*Abbe Raynal*.

## Treasury Department.

*Opinion by Wm. Lawrence, First Comptroller.*

### DISTRICT CONTRACTS CASE.

*In the Matter of the Authority of the Commissioners of the District of Columbia to make contracts for supplies prior to the passage of an appropriation act providing for their payment.*

The Commissioners of the District of Columbia cannot lawfully make any contract for supplies for the use of the District for any fiscal year until the proper appropriation act is passed by Congress providing for payment thereof.

July 19, 1882, the Commissioners of the District of Columbia addressed a letter to the First Comptroller, asking his decision whether certain contracts made by them prior to July 1, 1882, for articles to be furnished during the fiscal year ending June 30, 1883, for the use of the District are valid. The act making appropriations for the expenses of the District for the current fiscal year was not passed until July 1, 1882.

#### OPINION:

Section 3 of the act of June 11, 1878, providing a permanent form of government for the District of Columbia, (20 Stats., 103,) declares that the Commissioners "shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress." The act does not state what contracts the Commissioners may make, or what obligations they may incur, but it provides that they shall submit annual estimates to the Secretary of the Treasury, and after these have been acted upon by the Secretary, they shall be transmitted to Congress. It is also enacted that "to the extent to which Congress shall approve of such estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia."

The clause which prohibits the Commissioners from making any contract, or incurring any obligation other than such as are therein after provided for, and shall be approved by Congress, means, therefore, that they shall not make any contract, or incur any obligation other than such as may be authorized and approved by the appropriations made by Congress, or by other specific



statute. The act of July 1, 1882, making the appropriations referred to, in effect gives the Commissioner's authority to make contracts and incur obligations payable out of the appropriations therein made. Until an appropriation act has been passed, it cannot be known to what extent the estimates will be approved, or what expenditures will be authorized.

Section 3732 of the Revised Statutes of the United States enacts that "no contract or purchase on behalf of the United States shall be made, unless the same is authorized by law, or is under an appropriation adequate to its fulfillment. . . ." This section applies to this class of contracts, since, to a certain extent, the contract is on behalf of the United States. But the same result would follow, even without reference to this section.

The Commissioners of the District clearly had no authority to make the contracts referred to, prior to the passage of the appropriation act, and said contracts are, therefore, void. The parties with whom the void contracts have been entered into, if notified that they are invalid will, doubtless, enter into new contracts on the same original terms, and thus no injury result to them or the District. This is a subject entrusted to the discretion and judgment of the Commissioners.

The Commissioners will be advised accordingly.

TREASURY DEPARTMENT,  
FIRST COMPTROLLER'S OFFICE,  
July 22, 1882.

**Equity; Reformation of Written Instrument; Evidence**—A written instrument cannot be reformed on the ground of mistake unless the mistake is mutual, and the evidence of the mistake should be clear and free from reasonable doubt. [Wachendorf v. Lancaster; Supreme Court of Iowa; December, 1882.]

**1. Stoppage in Transitu; Arrival of Goods; Delivery**—The vendor's right of stoppage in transitu is not defeated by the arrival of the goods at the place of destination; it is terminated only by the goods passing into the actual or constructive possession of the vendee.

**2. Goods Held for Freight Charges**—Where goods have been shipped by railroad, they may be reclaimed by the vendor, as *in transitu*, while held by the railroad company for payment of freight charges, or from the possession of a third party who has paid the freight charges, but is not the agent of the consignee. [Greve v. Dunham; Supreme Court of Iowa; December, 1882.]

## The Courts.

### U. S. Supreme Court Proceedings.

MARCH 5, 1883.

The following persons were admitted to practice: E. L. Russel of Mobile, Ala., Edward H. East of Nashville, Tenn., William N. Botler of Knoxville, Tenn., D. H. Poston of Memphis, Tenn., John R. Thomas of Metropolis, Ill., F. E. Albright of Murphysboro, Ill., Frederick Thompson of New York City., Fresley N. Jones of St Louis, Mo., Charles C. Lancaster of Md., Alanson Smith of Boise City, Idaho Ter., Russell Houston of Louisville, Ky., C. Upson of San Antonio, Texas, Geo. M. Davis of Louisville, Ky., Sawnie Robertson of Dallas, Texas. Charles L. Dobson of Kansas City, Mo., Arthur J. Caton of Chicago, Ill.,

No. 520. *The State of Louisiana, ex rel. John Elliot et al. v. Allen Jumel, Auditor, et al.*, C. C. U. S., E. D. of La. Judgment affirmed. Opinion by Mr. Chief Justice Waite; dissenting Mr. Justice Field and Mr. Justice Harlan.

No. 529. *John Elliot et al. v. Louis A. Wiltz, Govner of Louisiana, &c., et al.*, C. C. U. S., E. D. of La. Decree affirmed. Opinion by Mr. Chief Justice Waite; dissenting Mr. Justice Field and Mr. Justice Harlan.

No. 845. *Andrew Antoni v. Samuel C. Greenhow, Treasurer, &c.*, S. C. of App. State of Va. Judgment affirmed. Opinion by Mr. Chief Justice Waite, dissenting Mr. Justice Field and Mr. Justice Harlan.

No. 166. *Orson Adams Receiver, &c., v. Jacob C. Johnson et al.*, C. C. U. S., D. of N. J. Decree reversed, cause remanded. Opinion by Mr. Justice Blatchford.

No. 22. *John N. Cushing et al. v. John Laird et al.*, C. C. U. S., S. D. of N. Y. Decree affirmed. Opinion by Mr. Justice Gray.

No. 113. *J. P. Giraud Foster et al. John W. Cushing et al.*, C. C. U. S., S. D. N. Y. Decree affirmed. Opinion by Mr. Justice Gray.

No. 51. *James D. Russell et al. v. Annie R. Allen, Executrix et al.*, C. C. U. S., E. D. of Mo. Decree affirmed, opinion by Mr. Justice Gray.

No. 82. *Wallace S. Jones, &c., et al. v. Wm. W. Habersham et al.*, C. C. U. S., S. D. of Ga. Decree affirmed. Opinion by Mr. Justice Gray.

No. 832. *Charles Borchering v. The Glenwood Cemetery.*, S. C. D. C. Decree affirmed. Opinion by Mr. Justice Gray.

No. 155. *The Green Bay and Minn. R. R. Co. v. The Union Steamboat Co.*, C. C. U. S., W. D. Wis. Judgment affirmed. Opinion by Mr. Justice Gray.

No. 167. *Cassius H. Read v. The City of Plattsmouth.*, C. C. U. S., D. of Neb. Judgment reversed, cause remanded. Opinion by Mr. Justice Matthews.

No. 153. *Howard Stebbins v. Maria L. Duncan et al.*, C. C. U. S., N. D. Ill. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 949. *The Wiggins Ferry Co. v. The City of East St Louis.*, S. C. State of Ill. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 662. *The Conn. Mutual Life Insurance Co. v. Anna C. Cushman et al.*, C. C. U. S., N. D. of Ill. Decree affirmed. Opinion by Mr. Justice Harlan.

No. 147. *The Inhabitants of Montclair, Essex Co.*

N. J., v. Thomas Ramsdell. C. C. U. S., D. of N. J. Judgment affirmed. Opinion by Mr. Justice Harlan.

Nos. 101 and 102. The Atlantic Works v. Edwin L. Brady, and Edwin L. Brady v. The Atlantic Works. Cross-appeals. C. C. U. S., S. D. Mass. Decree reversed and cause remanded. Opinion by Mr. Justice Bradley.

No. 1057. The Escanaba and Lake Michigan Tr. Co. v. The City of Chicago. C. C. U. S., N. D. Ill. Decree affirmed. Opinion by Mr. Justice Field.

No. 156. John R. Metsker et al. v. George H. Bonebrake, assignee, &c. C. C. U. S. D. of Ind. Decree reversed and cause remanded. Opinion by Mr. Justice Miller.

No. 164. Harry Stucky, assignee, &c. v. The Masonic Savings Bank et al. C. C. U. S., D. Ky. Decree affirmed. Opinion by Mr. Justice Miller.

Nos. 2 and 3, The State of New Hampshire v. the State of Louisiana et al. and the State of New York v. The State of Louisiana et al. Bill dismissed. Opinion by Mr. Chief-Justice Waite.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

##### GENERAL TERM.

Chief Justice CARTTER and Justices HAGNER and COX present.

MARCH 1, 1883.

Henry C. Stewart v. Edward G. Elliott. Argued and submitted.

Geo. Weber, C. B. Gordon and Edward S. Kaufman were admitted to the bar.

MARCH 2, 1883.

Thomas O'Day v. Louis Vansant. Argued and submitted.

Elida J. Middleton v. J. Stanley Jones. Decree pro confesso affirmed against Jones, Waters, Pumphrey and Courtney. Decreed that the complainant is entitled to the relief prayed &c.

MARCH 5, 1883.

Thomas O'Day v. Louis Vansant. Judgment of special term reversed and cause remanded to be tried anew.

Clifton Anderson et al. v. William Smith. Same.

Application of Henry B. Noble. Motion not determined until necessity arises.

George H. Armes v. Otis Bigelow. Mandate of S. C. U. S., affirming the decision of S. C. D. C. received. Execution ordered in pursuance of said mandate.

MARCH 6, 1883.

William H. Malone was admitted to the bar.

U. S., ex rel. William J. Jenkins v. Charles J. Folger, Secretary, &c., Time extended to show cause.

U. S. v. The Nat. Bank of the Republic. Argued and submitted.

In re Charles Healon. Patent appeal. Argued and submitted.

#### EQUITY COURT.—Justice James.

MARCH 1, 1883.

Addis v. Addis. Divorce granted.

Robinson v. Johnson. Wm. Telghman admitted as a party defendant.

Sturgis v. Holladay. Order amended and exceptions to auditor's report overruled in part.

Wood v. Meigs. Rule discharged and injunction denied.

MARCH 2, 1883.

Ware v. Ware. Alimony pendente litâ ordered paid.

Vail v. Vail. Testimony before examiner ordered taken.

Reid v. Reid. Testimony before auditor ordered taken.

Marr v. Barry. Appearance of absent defendant ordered.

Fitzmorris v. Moran. Appointment of receiver denied and defendant restrained from purchasing on credit of complainant.

Brooke v. Eaton. Guardian ad litem appointed.

MARCH 3, 1883.

Bibb v. Hunter. Trustee authorized to receive cash.

Moore v. Harrison. Re-sale ordered and trustees appointed to sell.

Central Nat. Bank v. Hume. Exceptions to auditor's report overruled.

Langley v. Ferry. Sale finally ratified.

MARCH 6, 1883.

Farquhar v. Jones. Decree denying injunction. Carter v. Carter. Divorce granted.

Fitzmorris v. Moran. Leave to file amended bill granted.

Compton v. Gray. Restraining order continued. Sykes v. Sykes. Appearance of absent defendant ordered.

Neumyer v. Neumyer. Reference to auditor ordered.

Barker v. Perry. Withdrawal of special replication ordered, with leave to amend petition.

Ragan v. Campbell. Report confirmed and defendant's title divested.

#### CIRCUIT COURT.—Justice Mac Arthur.

MARCH 3, 1883.

Hoffman v. Haight. Demurrer to replication ordered to be heard in General Term.

Langdon v. Evans. Exceptions to be settled at a time stated.

Jones v. Taylor. Demurrer to declaration sustained.

Burke v. Kenner. Demurrer to plea sustained. Keyser v. Nitz. Bill of exceptions filed.

Young v. Dist. of Col. Demurrer to amended declaration sustained.

MARCH 5, 1883.

Heinline v. W. & G. R. R. Co. Verdict for plaintiff for \$500.

MARCH 6, 1883.

U. S. use of Lang, v. May et al. Referred to W. F. Mattingly, as referee.

MARCH, 1883.

Hammond v. Miller. Verdict for plaintiff for \$724.14.

Cutter & Foster v. Cross. Judgment by default. Walker, Stron & Carroll v. Cross. Same.

Towles v. Murphy. Same.

Burchard v. Brashears. Same.

Harnes Bros. v. Dammon. Same.

Sainger v. Silverberg. Same.

Strobel & Co. v. Silverberg. Same.

Banks v. Norris. Same.

Stockstill & Co. v. Dwight & Hoyt. Discontinued by plaintiffs.

Bigelow v. Armes. Dismissed at plaintiff's costs.

MARCH 8, 1883.

Jackson & Co. v. Miller. Verdict for plaintiff for \$432.25.

Webb v. Bohn. Judgment by default.

Mayse & Co. v. Wright. Same.

Paillard & Co. v. Hebeg et al. Same.

Dickson & King v. Myers. Same.

Dungan v. Marr. Verdict for plaintiff for \$118.52

MARCH 9, 1883.

Pote v. W. & G. R. R. Co. Verdict for defendant.

Höbe Bros. & Co. v. Elliot. Judgment by default.

**PROBATE COURT.—Justice James.**

FEB. 23, 1883.

Estate of Charles Gordon. Notice to administrator appointing day for settlement.

Estate of John H. Wheeler. Answer filed; cause continued.

Estate of Charles W. Mullaly. Administratrix appointed and bonded.

Estate of Hellen L. Stewart. Order on administrator to hold title &c.

In re Francis W. Eaton, guardian; third account passed.

In re Daniel Pratt Wright, guardian; second account passed.

Estate of J. Erhard Mack. Petition for administration and order of publication.

Estate of Katharina Muller. Petition of husband and assent of next of kin appointing him administrator; bonded.

Estate of James F. Meguire. Order for administrator to give additional bond.

In re Jeannie T. Rives, guardian; bond given.

Estate of Thos. Coburn. Accounts of administrator passed.

Estate of Alfred H. Rodgers. Same.

Estate of Joseph Anderson. Order revoking letters.

Estate of Sarah Whitman Parris. Order of publication and citation.

Estate of Daniel McNamara. Order to take testimony.

Estate of Michael Shiner. Appointment of administrator; bonded.

Estate of John G. Stafford. Order to cite administratrix to settle account.

In re Mary E. Ferguson, guardian; petition and order on surety to show cause, &c.

Estate of Euridice F. Simms. First account of executrix passed.

Estate of Martha E. Popkins. Petition for letters and order of publication.

FEB. 24, 1883.

Estate of Katharine Muller. Administrator qualified and bonded.

Estate of August Koch. Inventory returned and sale ordered.

Estate of Harriet S. Herbert. Will admitted to probate. Letters granted.

FEB. 26, 1883.

Estate of Caroline S. Risque. Final notice of administrator issued.

Estate of Rebecca T. Tompkins. Inventory returned and sale ordered.

In re John Beck, Guardian. Rental value of real estate returned by guardian.

Estate of Catherine Sonnenschmid. Return of administrator filed.

FEB. 27, 1883.

Copy of will of John Slater. Filed and recorded.

FEB. 28, 1883.

Will of John Gavin. Filed and proved by one witness.

Will of Jourdan W. Maury filed; with petition of executrix, will proved by one witness.

**CRIMINAL COURT.—Justice Wylie.**

FEB. 17, 1883.

U. S. v. Andrew Harris.

Indictment for second offence of petit larceny; plea of not guilty withdrawn and plea of guilty entered. Sentenced to Erie Co. Penitentiary for two years.

FEB. 19, 1883.

U. S. v. John W. Dorsey et al.

M. C. Rerdell testified on the part of the government. The witness stated that he had received from the defendant Dorsey, two telegrams which he had destroyed. Objections were made by the counsel for the defendants to his stating their contents which objections the court sustained. The counsel for the defendants objected to any testimony being received from the witness in regard to an affidavit in which he had admitted that he had sworn falsely. The court overruled the objection, contending that the affidavit was an extra-judicial oath and not involving technical perjury. The court ruled that where notice was given to produce books that on the refusal to produce them the contents could be proven by parole.

The counsel for the government asked leave to cross-examine the witness; not granted by the court as the witness was not adverse to the government.

FEB. 20, 1883.

Counsel for defendants contended that the witness was incompetent to testify because he had plead not guilty before trial, and would move to strike out the whole of his testimony. The court ruled that the witness was on the stand with permission, and that he was competent to testify without an order. The court ruled that the roster of a company of U. S. Infantry was incompetent evidence to prove that members of the Co. appeared on a petition for increase.

FEB. 21, 1883.

In re V. Jansen Ross.

Petition for writ of habeas corpus denied by the court: The court held that the commitment states that the prisone was sentenced to jail for an offence and a misdemeanor within the jurisdiction of the police court.

FEB. 24, 1883.

U. S. v. Robert alias Pussy Smallwood. Indictment for house breaking in night time. Plead guilty sentenced imprisonment for three years.

D. C. v. Joseph Loechboechler. Appeal from Police Court of information for an unlicensed bar pleaded guilty; sentenced a fine of \$105 and costs.

FEB. 26, 1883.

U. S. v. John W. Dorsey et al.

FEB. 26, 1883.

Same.

FEB. 28, 1883.

Cross examination of Rerdell by the defence, and re-examination by the prosecution. Rerdell was cross-examined.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

34287. Fillmore Beall et al. Jacob P. Angney. Note, \$500. Pliffs attys, Bell and Lipscomb.

MARCH 3, 1883.

34288. M. W. Galt & Co. v. Charles E. Hooker. Account, \$114.75. Pliffs atty, R. Fendall.

MARCH 5, 1883.

34289. St. Johns' College v. George H. Giddings. Acc't., \$5,981.47. Pliffs attys, Ross & Dean.

34290. John A. Dushane & Co. v. James J. Chapman. Account, \$154.34. Pliffs attys, Ross & Dean.

34291. William G. Brausenver v. Joltire Randall. Note and order, \$1,207.45. Pliffs attys, Miller & Forrest.

34292. William W. McCullough v. George Killeen. Certiorari. Defts attys, Garnett & Robinson.

34293. Same v. Same. Certiorari. Defts atty, same.

34294. Same v. Same. Certiorari. Defts atty, same.

34295. Patrick B. Dunn v. Thomas Melle. Judgment of Justice Walter, \$77.98. Pliffs atty, F. Beall.

MARCH 6, 1883.

34296. John O. Guethler v. Thomas Melle. Judgment of Justice Walter, \$37.32. Pliffs atty, Chas A. Walter.

34297. William S. Mitchell v. Harriet A. Zantsinger. Certiorari. Pliffs atty, O. A. Walter. Defts attys, Cook & Cole.

34298. E. de Merolla & Co. v. Benjamin Holladay. Account, \$160. Pliffs attys, Birney & Birney.

34299. John Ruppert's Sons v. Michael Oppenheimer. Account, \$112.47. Pliffs attys, Miller & Forrest.

34300. Theodore S. Neligan v. The Va. Midland R. R. Co. Damages, \$5,000. Pliffs attys, Dye and Pool.

34301. Jacob C. Shafer & Co. v. Owen McGee. Account, \$240.14. Pliffs atty, A. B. Duval.

MARCH 7, 1883.

34302. Willett & Libbey v. Charles G. Stone. Judgment of Justice Hall, \$53.20.

34303. Willett & Libbey v. Dennison Reeside. Judgment of Justice Hall, \$99.21.

### IN EQUITY.—New Suits.

MARCH 1, 1883.

8473. Hannah Kaiser v. Carrie V. Cissell et al. To sell. Com. sol., E. B. Hay.

8473. Thomas Lucas v. John Johnson et al. To quiet title. Com. sol., B. F. Leighton.

MARCH 3, 1883.

8474. Eugene Betts v. James Carrico et al. Judgment creditors' bill. Com. sols., Elliot and Elliot.

MARCH 5, 1883.

8475. Joseph Sykes v. Mary A. Sykes. For divorce. Com. sol., C. S. Bundy.

8476. Wallace W. Kirby et al. v. Ann M. Stafford et al. Creditors' bill. Com. sols., Hine & Thomas and C. A. Walter.

MARCH 6, 1883.

8477. Kate F. Sage et al. v. Mary E. Sage et al. To sell. Com. sols., McNalley and Hay.

MARCH 7, 1883.

8478. Elizabeth O. Hubbell v. Wm. H. Hubbell. For divorce. Com. sol., Joseph Daniels.

8479. Jennie Castine v. William Castine. For divorce. Com. sol., O. Felham.

8480. Mary E. Stroud v. Harry R. Stroud. For divorce. Com. sol., John P. Anderson.

8481. Maurice J. Adler v. John J. Cook et al. Judgment creditors' bill. Com. sol., C. M. Matthews.

### Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 5, 1883.**

In the case of William K. Duhamel, Administrator of John P. Sherburne, late of San Francisco, Cal., deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 10-8 H. J. RAMSDELL, Register of Wills.

### Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Thursday the 8th day of March, 1883.**

MARY E. STROUD, Plaintiff, } No. 8480. Eq. Doc. 22.

HARRY R. STROUD, Defendant. }  
On motion of the plaintiff, by Mr. Jno. P. Anderson, his attorney, it is ordered that the defendant, Harry R. Stroud, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. CHAS. P. JAMES, Justice.  
True copy. Test: 10-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

EDWARD L. PALMER ET AL. } No. 8442. Eq. Doc. 22.

HENRY C. BOWERS ET AL. }  
On motion of the plaintiffs, by Mr. McPherson, their solicitor, it is ordered that the defendant, Theodore Van Heusen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: E. J. Meigs, Clerk.  
R. W. MCPHERSON, Solicitor. 10-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, March 6, 1883.**

JOSEPH SYKES } No. 8475. Equity.

MARY ANN SYKES. }  
On motion of the petitioner, by C. S. Bundy, his solicitor it is ordered that the defendant, Mary Ann Sykes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 10-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHAS. } No. 8144. In Equity.

CHAS. ET AL. }  
W. K. Duhamel, the trustee, having reported a sale of parts of lots 9 and 10, in square 426, being the south part of lot 9, fronting twenty (20) feet on Seventh street, and running the same width; the depth of the lot sixty-six (66) feet and eight (8) inches; and the northern two-and-a-half (2½) inches of lot 10, commencing at the southeast corner of lot 9, and running south two-and-a-half (2½) inches, thence west with a line parallel to the south line of lot 9, being a strip of ground two-and-a-half (2½) inches, fronting on Seventh street and of the same depth as lot 9, to Richard C. Lewis, for \$4,010.

And also, a sale of part of lot 6, in square 341, beginning at a point on the line of Eleventh street, west, 124 feet 7 inches from the northwest angle of the square and running due south twenty-five (25) feet, due east one hundred (100) feet, thence due north twenty-five (25) feet, thence due west one hundred (100) feet to the place of beginning, to William F. Free, for \$2,810 cash. It is, this eighth day of March, 1883, by the court, ordered that the said several sales be and the same are hereby ratified and confirmed unless cause contrary be shown on or before the ninth day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last mentioned day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 10-8 Test: R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 6, 1883.**

In the matter of the Will of Louisa Joachim, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Michael Joachim. All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
FRANKLIN H. MACKAY, Solicitor for Petitioner. 10-8

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jourdan W. Maury, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of March, 1883.

SARAH MARIA MAURY, Executrix.

WM. A. MAURY, Solicitor. 10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., on the personal estate of Michael Shiner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of February, 1883.

PETER P. LITTLE, Administrator d. b. n.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph O. Fearson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1883.

WILLIAM H. FEARSON.

ANSON S. TAYLOR, Solicitor. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 8th day of March, 1883.**

THOMAS P. MORGAN, Plaintiff, } No. 23,718. At Law.

ALBERT CINGRIA, Defendant. }  
On motion of the plaintiff, by Mr. W. F. Mattingly, his attorney, it is ordered that the defendant, Albert Cingria, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. Test: 10-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

MARY POWER } No. 7,704. Equity.

MARY A. J. POWER ET AL. }  
Job Barnard, trustee herein, having reported a sale of lot number four (4), and the west ten feet front of lot number three (3), in Davidson's sub-division of lots one (1) and ten (10), in square number three hundred and thirteen (313), in Washington City, in the District of Columbia, to Sarah Green, for \$3,508.33:

It is, this 8th day of March, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: R. J. MEIGS, Clerk.  
EDWARDS & BAERNARD, Solicitors. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. March 6, 1883.**

In the case of Nathan A. C. Smith, Administrator of Chauncey Smith, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
WM. B. WEBB, Solicitor. 10-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 26th day of February, 1883.**

MARIA BERRY } No. 8462. Equity Docket, 22.

MARY A. BYRNE ET AL. }  
The Marshal having returned "not to be found" as to the defendants hereinafter named:

On motion of the plaintiff, by Messrs. F. W. Jones and Thos. Jesup Miller, her solicitors, it is ordered that the defendants, J. Owens Berry, Geo. W. Gunnell, Richd. Berry, of Baltimore, Elizabeth Trott, Chas. G. Haslup, Hester King and Philip Dougherty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 9-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. February 26, 1883.**

In the case of Ferdinand W. Risque, Administrator, c. t. a., of Caroline S. Risque, deceased, the Administrator, c. t. a., aforesaid has, with the approval of the court, appointed Friday, the 30th day of March, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control: when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 9-3 H. J. RAMSDELL, Register of Wills.  
GORDON & GORDON, Solicitors. 9-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the matter of the Estate of Martha E. Popkins, late of the District of Columbia, deceased,  
Application for Letters of Administration on the estate of the said deceased has this day been made by Thomas H. Popkins.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
B. H. WEBB, Solicitor. 9-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the matter of the Estate of William D. Aiken, late of the District of Columbia, deceased,  
Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Hellen.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CRITTENDEN & MACKAY, Solicitor. 9-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business, March 2, 1883.**

In the matter of the Will of Charles A. Watts, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Martin F. Morris.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
JOHN B. LARNER, Solicitor. 9-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.  
93 ROBERTA KOCH, Executrix.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Wood Jones, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1883.

GEORGE H. WOOD, Administrator.

EDWARDS & BARNARD, Solicitors. 9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 2, 1883.**

In the matter of the Estate of David Hamiter, late of the District of Columbia, deceased.

Application for Letters Testamentary on the estate of the said deceased has this day been made by Rhoda A. Hamiter, of Arkansas.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

IVORY G. KIMBALL, Solicitor. 9-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1883.

CHARLES M. RANDALL,

JOHN CRITCHER, Solicitor. 7-3 mark. Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Montgomery County, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert H. Wyman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1883.

9-3 CHARLES ABERT, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day March, 1883.**

KATE MARR, guardian of FRANK T. BARRY, Complainant.

No. 7,022. Eq. Dec. 20.

FRANK T. BARRY and others, Defendants.

On motion of the complainants, by Messrs. Riddle, Davis & Padgett, her solicitors, it is ordered that the defendants, Blanche Goss, Henry Robinson, Charles Robinson, Alfreda Robinson and David Robinson, cause their appearance to be entered to the amended bill herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 9-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James F. Meguire, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 30th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of February, 1883.

LEWIS S. WELLS, Administrator.

HINE & THOMAS, Solicitors. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. February 23, 1883.**

In the matter of the Will of Sarah Whitman Parris, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Samuel B. Parris, of Washington City, surviving executor.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of March, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.

CHARLES S. WHITMAN, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the matter of the Estate of J. Erhard Mack, late of the city of New York, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James H. Marr, of Washington City.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.

W. PIERCE BELL, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the case of Thomas E. Waggaman, Administrator of Charles Gordon, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 23d day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 8-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JULIA E. GALLANT

v.

No. 4,995. Equity.

EDWARD GALLANT ET AL.

William G. Gallant, trustee herein, having reported that he has sold lots 23, 23 and the north 3 feet front on Fifth street by 68 feet, 2 and 1/4 inches in depth of lot 24, in Gallant's subdivision of square 479, in the city of Washington, D. C., for \$1,600, in cash, subject to taxes and assessments, to William O. Denison, who is to assume and pay all taxes and assessments on all of said lots 23, 23 and 24:

It is, this nineteenth day of February, 1883, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 23d day of March, 1883. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 R. J. MEIGS, Clerk.

*Legal Notice.***THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Resin A. Miller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1883.

THADDEUS BEAN, Executor.  
WM. H. DENNIS, Solicitor. 8-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mathias Christmiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1883.

F. MILLER, Solicitor. ANTON RUPPERT. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 16, 1883.**

In the matter of the Estate of John E. Clark, late of Washington, D. C. deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John Jay Knox, Commissioner of Freedmen's Savings and Trust Company.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
FRANK T. BROWNING, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 16, 1883.**

In the matter of the Will of Maria Benter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by W. L. Crooker.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. C. WEAVER, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, February 16, 1883.**

In the matter of the Will of Peter McGrath, late of the District of Columbia, deceased.

Application for Letters Testamentary on the estate of the said deceased has this day been made by Daniel Hannan.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
JNO. F. EMMIS, Solicitor. 8-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Henderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of February, 1883.

HELEN B. HENDERSON,  
MARY E. HENDERSON.  
WM. G. HENDERSON, Solicitor. 8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES T. WARD ET AL. } No. 8,304. Equity,  
v.  
EDITH WARD ET AL. }

James S. Edwards, the trustee herein, having reported a sale of a part of the lots 2 and 3, in the square 294, containing 1,200 square feet of ground, to William B. and Robert Downing, assignees of Daniel J. Macarty, for the sum of \$1,188, also of a part of the said lot 3, in said square, containing 2,028.88 square feet of ground to the said Daniel J. Macarty, for the sum of \$1,843.81, and which said several parts of said lots, are more particularly described in the report of said trustee and the proceedings in this cause:

It is, this 20th day of February, A. D. 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 21st day of March, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

LOONEY } No. 8,034. Equity.  
v.  
QUILL ET AL. }

AND } CONSOLIDATED.  
QUILL }  
v.  
LOONEY ET AL. } No. 8,193. Equity.

R. Byrd Lewis and Wm. Pierce Bell, trustees herein, having reported a sale of parts of lots (13) thirteen and (14) fourteen, in square (624) six hundred and twenty-four, being the east (8) feet front of lot (14) fourteen, and the west (8) feet front of lot (13) thirteen, the two parts forming a front on north G street, of (16) sixteen feet and running back with even width one hundred and twenty-four (124) feet; to Dennis Quill, for \$1,500:

And also that the rear part of said parts of lots (13) thirteen and (14), in square (624), six hundred and twenty-four, having a width of (16) sixteen feet and a depth of fifty-one (51) feet and three (3) inches, was sold to Dennis Quill, by them for \$625:

And also a sale of the western part of lot numbered (2) two, in square (679), six hundred and seventy-nine, to Daniel Baldy, for \$625; and that the purchasers of the several parcels have complied with the terms of sale as stated in said report:

It is, this 19th day of February, A. D. 1883, ordered, by the court that the said several sales be and the same are hereby ratified and confirmed unless cause to the contrary be shown on or before the 23d day of March, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 8-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of February, 1883.**

VALENTINE MCNALLY } No. 8,407. Eq. Doc. 22.  
v.  
ELIJAH J. WARD ET AL. }

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, Elijah J. Ward and Sarah E. Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 8-3 R. J. MEIGS, Clerk.



# Washington Law Reporter

WASHINGTON - - - - - March 17, 1883

GEORGE B. CORKHILL - - - - - EDITOR

THE EFFECT of the addition of a seal to the signature of a promissory note, was considered by the Supreme Court of Michigan in the case of Rawson v. Davidson (15 Reporter, 338).

The action was brought upon an instrument of the following tenor:

\$150.00. EAST SAGINAW, July 27, 1880.

On or before the first day of November, 1880, I, the subscriber, of the town of Thomas, County of Saginaw, State of Michigan, promise to pay to I. S. Case & Co., or bearer, \$150, at the First National Bank, Saginaw City, for value received, with interest at 7 per cent. per annum from date until maturity, and 7 per cent. interest on the amount due at maturity until paid, and if suit is commenced, agree to pay 10 per cent. attorney's fees and consent that the same shall be taxed as costs, and entered up as part of the judgment. Witness my hand and seal.

JOHN DAVIDSON. [SEAL.]

In presence of W. H. Caffery, post office. Saginaw city, County of Saginaw, Michigan,

The court below held that the addition of the seal did not deprive the instrument of the negotiable quality accorded by the statute to promissory notes, but the appellate court took a different view and held that the addition operated to enlarge the remedial rights of the promisee under the statute of limitations, and rendered the contract stable in covenant at any time within ten years after the cause of action accrued, while in the absence of the seal action upon the instrument could be brought only within six years; that the paper was obviously made a specialty in order to secure remedial advantages, and when this was done it involved a waiver of particular qualities and became excluded from the description of instruments declared by the statute "negotiable in like manner as inland bills of exchange, according to the custom of merchants."

ALL the telephone wires in Paris are laid under ground, and their aggregate length is 2,187 miles.

A FIRE AND MARINE INSURANCE COMPANY of Virginia was sued in the United States Circuit Court, at New York—Providence and Stonington Steamship Company v. the Virginia Fire and Marine Insurance Company—upon a marine policy for \$5,000, and an attachment was levied on \$10,000 of United States 4 per cent. registered bonds in the hands of the Superintendent of the Insurance Department of the State of New York, at Albany, there deposited under the provisions of the State laws. The insurance company, after cancelling its outstanding risks in New York, moved to vacate the attachment, and Judge Blatchford, in granting the motion, on March 13, said: "The question is whether the bonds were subject to such levy in the hands of the insurance superintendent. The plaintiff contends that the bonds are the property of the defendant in this State and subject to the levy, particularly as they are no longer held for the protection of any citizens, residents or inhabitants of this State holding policies issued by the defendant. The insurance superintendent is a public officer of the State, created by statute and charged with the execution of the laws in relation to insurance. No case of acknowledged authority is found which holds that a public officer of a State, charged with a trust created by a public statute of the State in respect to funds or securities in his possession, can be made liable in respect to them by an attachment in favor of a person not claiming under the trust."—*American Law Magazine*.

## Important Tax Reduction.

The Congress which has just adjourned made several important changes in the revenue law, by which taxes are reduced and some inconveniences of doing business are removed. For example: On and after July 1, 1883, the stamp tax ceases on bank checks, drafts, orders, vouchers, and the tax on matches, medicines, perfumes, etc. The taxes on tobacco and dealings therein are also greatly reduced.

ALL the schemes for the alteration of the patent laws, trespass upon inventor's rights, extension of defunct patents, &c., failed in the recent Congress. Inventors may, therefore, breathe freely for a year at least, and go ahead with the development of new and useful discoveries.



# Supreme Court District of Columbia

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

SAMUEL STRONG vs. ALBERT GRANT.

AT LAW. No. 21,377.

{ Decided February 12, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. Where a decree in equity is relied upon as *res judicata* and is pleaded in bar in a subsequent suit, it must be shown that the decree was made upon the same subject-matter and for the same purpose and that the parties in the character in which they are litigants are identical.
2. For the purpose of ascertaining the point in controversy in a former suit and what the court really intended to settle by its decree, not only the record, but, if necessary, the *opinion*, as reported in the officially published report of the case, will be examined.
3. The matter settled by a decree in a former suit, stated by the court, and distinguished from that of the case at bar and held not to be an adjudication of the present controversy.

## STATEMENT OF THE CASE.

In the year 1869 the plaintiff, Strong, did certain brickwork on sixteen houses which the defendant Grant was then building. The price of the work was agreed upon, and in payment therefor Strong was to take one of the houses at a fixed price. The contract was reduced to writing, and a conveyance of the house agreed upon was made by Grant, the deed being placed in the hands of Mr. Totten, as an escrow, to be delivered to Strong when the work was completed. Subsequently, a new agreement was entered into by which Grant was to give Strong his negotiable note, payable within three months from the date of the completion of the work, when the old agreement was to be cancelled and declared null and void, and the escrow to be delivered up to Grant, otherwise said agreement to remain in full force and effect. Subsequently, in pursuance of this last agreement, Grant gave his note for \$1,547, and a paper was signed by which the escrow in Totten's hands was declared null and void. This last paper was signed January 1st, 1870, and on the same day Strong filed a mechanic's lien upon the houses, and brought suit in equity to enforce the same. The validity of the lien was disputed by Grant, and the cause coming on for final hearing, on appeal to the General Term, a decree was made holding the lien a valid one, and rendering judgment against Grant for \$1,547, with costs of suit. On an appeal to the Supreme Court of the United States, this decree

was reversed (see *Grant v. Strong*, 18 Wall, 623), on the ground that the agreement entered into by Strong showed that he had relied upon a security for the payment of his work inconsistent with the idea of a mechanic's lien, and that no such lien had ever attached. The cause was remanded to this court with directions to dismiss the bill, which was done.

Some five years elapsed, and Strong brought this suit upon the note, setting up a new promise within two years prior thereto.

The defendant, Grant, pleaded, besides the statute of limitations, two pleas, as follows:

2. That said plaintiff impleaded the defendant in a suit in equity for the same identical claim and cause of action in the declaration mentioned, in the Supreme Court of the District of Columbia, in equity cause numbered 1956, which cause was appealed to the Supreme Court of the United States, and such proceedings were thereupon had that said bill in equity was dismissed, and the promissory note therein and herein sued on, was delivered to this defendant, and was then and thereby discharged.

3. That said plaintiff impleaded said defendant in a suit in equity for the same identical claim and cause of action in the declaration herein mentioned, in the Supreme Court of the District of Columbia, in equity cause numbered 1956, which cause was appealed to the Supreme Court of the United States, and such proceedings were thereupon had, that said cause was decided in favor of this defendant and said bill in equity was determined.

To these pleas issues were joined.

After the introduction of evidence, including the record of the equity cause, and the proceedings in the Supreme Court of the United States on appeal, and the decree thereunder, the defendant, Grant, prayed the court to give the following instructions to the jury:

1. If the jury find from the evidence that the plaintiff impleaded the defendant in a suit in equity for the same cause of action as in the declaration herein mentioned, and the said suit in equity was tried, and appealed to the Supreme Court of the United States, and that such proceedings were thereupon had, that said bill in equity was dismissed by a decree absolute in its terms, not made on some grounds which do not go to the merits of the cause, such dismissal is a final determination of the controversy, and constitutes a bar to the suit.

2. When words of qualification, such as "without prejudice," or other terms indica-

ting a right or privilege to take further legal proceedings on the subject, do not accompany the decree, it is presumed to be rendered on the merits, and is a final determination of the controversy.

The court having refused to grant these prayers and a verdict being rendered for the plaintiff, the case came to this court on exceptions to the refusal of the court so to instruct the jury. The other facts necessary to an understanding of the case appear in the opinion of the court.

ENOCH TOTTEN and FRANK T. BROWNING for plaintiff.

THE DEFENDANT appeared in his own behalf.

Mr. Justice HAGNER delivered the opinion of the court.

The only question before us upon the exception, is whether the judge below was right in deciding that the decree of the Supreme Court of the United States in the equity cause, pleaded and given in evidence at the trial, did not constitute a bar to a recovery by the plaintiff in this action.

The present suit is brought upon a note dated January 1, 1870, at three months, for \$1,547.00, executed by A. Grant, payable to the order of Samuel Strong, at the National Bank of the Republic.

The equity cause offered in evidence, No. 1956, was instituted by Strong against Bradley, Totten, Ellison, Ladomus, Lincoln and Willard, the trustees and beneficiaries under two deeds of trust, antecedent in date to the note sued on, against Totten and Fletcher, the trustee and beneficiary under another deed of trust, subsequent in date to said note, and against Charles and Thomas Ford, the grantees in the deeds in fee simple of two of the lots. All these were made parties defendant with A. Grant, the alleged owner of all the property, at the time certain materials were claimed to have been furnished and certain work done by Strong for Grant. The bill prayed that all the defendants might be brought before the court; that the last deed of trust and the two deeds in fee simple might be declared null and void, as having been made without consideration, and that all the property might be sold to discharge the complainant's mechanic's lien, notice of which he had filed under the provisions of Article 20 of the Revised Statutes of the District of Columbia. After answer, the defendant Grant, under §708 of the article, filed a written undertaking, with Wm. H. Heurtes and Calvin S. Mattoon as sureties, which was approved by the court, with the design, in the words of the act, "to

release the property from the lien thereby created."

The cause afterwards proceeded to hearing; and in April, 1871, a decree was passed by the Equity Court declaring that the lien of the plaintiff was good and valid at the time of filing his notice of intention to hold the lien against the lots therein mentioned, and giving judgment against Grant, the principal, and his sureties, upon the undertaking.

On appeal to the General Term, this decree was amended by rendering judgment against Grant for the sum claimed to be due, with interest, and setting aside the decree against the sureties, Heurtes and Mattoon. The cause was taken to the Supreme Court on appeal by Grant, and on January 6, 1874, the decree of the Supreme Court of the District of Columbia was reversed with costs, and the Supreme Court of the District of Columbia was directed to dismiss the bill. A decree accordingly was passed by the last named court that the bill be dismissed with costs, and that the defendant have execution thereof, and the costs were afterwards collected by Grant.

Do these proceedings establish that the matter in controversy in the present suit is *res judicata* as between the parties thereto?

The principles governing this defense are well expressed by the Supreme Court in Washington, Alexandria and Georgetown Steamboat Co. v. Sickles, 24 Howard, p. 341, in these words: "The authority of the *res judicata*, with the limitations under which it is admitted, is derived by us from the Roman law and the Canonists. Whether a judgment is to have authority as such is another proceeding depends, *an idem corpus sit; quantitas eadem, idemjuss; et an eadem causa petendi et eadem conditio personarum; quæ nisi omnia concurrent alia res est*; or as stated by another jurist, *exceptionem rei judicate, ob stare quotiens eadem quæstio inter easdem personas revocatur*. The essential conditions under which the exception of the *res judicata* becomes applicable are the identity of the thing demanded, the identity of the cause of the demand, and of the parties, in the character in which they are litigants. This court describes the rule in *Apsden v. Nixon*, 4 How., S. C. R., 467, in such cases to be, that a judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, must have been made by a court of competent jurisdiction, *upon the same subject-matter, between the same parties, for the same purpose*."

It is necessary, before proceeding to apply the tests laid down by this rule to the matter before us, to consider a preliminary objection

insisted on by the appellant, that we are confined to the written record in the proceeding pleaded in bar, and have no power to examine the opinion of the Supreme Court, or resort to any other means of ascertaining what was the matter really in controversy in the equity suit and actually settled by the decree relied upon.

In examining this question in the case of *Cromwell v. County of Sac*, 94 U. S., 555, the Supreme Court says: "But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action, to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what *might* have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action." On page 554, the judge, speaking of the decision in *Newton v. Caldwell*, 2 Wallace, says: "The court held, after full consideration, where the form of the issue was so vague as not to show the questions of fact submitted to the jury, it was competent to prove by parol testimony what question or questions of fact were thus submitted and necessarily passed upon by them," &c. In the case before it, the court was considering the effect and scope of its previous decisions in a case which was relied upon as *res judicata* in the case then pending, and in this connection it says, on page 559, "Reading the record of the lower court (in the first case) by the opinion and judgment of this court, it must be considered that the matters adjudged in that case were there," &c.

So in 24 How., 544, the court declared that "extrinsic evidence would be admitted to prove that the particular question was material, and was in fact contested, and that it was referred to the decision of the jury." See also *Campbell v. Rankin*, 99 U. S., 263; 1 Greenl. Ev., § 532.

In the light of these authorities we are authorized and required to examine the opinion of the Supreme Court reported in the case of *Strong v. Grant*, 18 Wallace, 624 with a view of ascertaining what that court really intended to settle by its decision reversing the decree below. And from that examination it appears to be too plain for controversy that the only question designed to be passed upon

in that judgment was whether Strong was entitled to a mechanic's lien upon Grant's real estate described in the notice filed in the clerk's office.

The question whether Grant owed money to Strong was not contested. Indeed, it had been so fully conceded by Grant in his answer to the bill, that such a denial would have been in astonishing inconsistency with his defense. For Grant had insisted, as showing that Strong had no right to claim a mechanic's lien, that by the terms of their written contract Strong was to look to a deed of a lot left in the hands of Totten, as an escrow, as the security for his claim, which was to be liquidated in a note. He further averred that he had been prepared to pay the note at maturity, but that Strong had assigned it to a third party who had in turn parted with its possession to some person unknown to him. That the Supreme Court could have intended by its decree to absolve Grant entirely from payment of an admitted indebtedness is inconceivable. On the contrary, that court pointed out that Strong's claim was a plain legal demand, and, therefore, not cognizable in an equity court, which is vested with no jurisdiction to collect debts recoverable at law; and hence, their decree was within the category described in the case of *Fout v. Gibbs*, 1 Gray, 413, cited in behalf of the appellant: "But if the court does not take jurisdiction of a suit in equity but dismisses the bill because the plaintiff has an adequate remedy at law, or for want of prosecution, or otherwise, for some cause not embraced in the merits, such a dismissal is not a bar."

But apart from the language of the opinion, it is manifest from the very nature of the proceedings, that Strong's bill was not designed to perform the mere function of collecting this note. In his affidavit and account accompanying his notice of claim, no mention is made of any note. He speaks only of an indebtedness, as though still unliquidated. If his purpose was simply to recover a judgment against Grant he would naturally have resorted to a suit at law like the present. But he was not content with that form of remedy, and he sought other security than such as a judgment against Grant would afford.

The undertaking, by operation of law, was the substitute for the property thereby released from the lien; but its continuance and enforcement depended altogether upon the determination of the question whether the claim to the lien was a valid one. If the lien should be sustained, the three obligors were to respond; if not, they were to be wholly exonerated, but such exoneration could not

be considered as a discharge of a note executed by the principal obligor alone. As well might it be contended that the Supreme Court, by its decision, determined in favor of the validity of the deeds assailed in the bill as void for want of consideration.

It is evident, therefore, that the decree sought to be set up as a bar, was not made "upon the same subject-matter," and "for the same purpose;" that there does not appear "the identity of the thing demanded and the identity of the cause of the demand," required by the rules before stated.

Neither does there appear the identity of the parties in the character in which they are litigants.

In the equity cause Grant was only one of ten defendants; to the decree of the special term enforcing a compliance with the undertaking, Grant was one of three defendants. In the present case he is the sole defendant. It cannot, as matter of fact, be said that the cases are between the same defendants. And as matter of law, it cannot be so considered. Thus it has been determined that a decree in equity in favor of two defendants upon a bill brought by one complainant for a specific performance of a contract, was no bar to an action at law by the same complainant against one of the defendants alone, to recover damages for the breach of the contract. See *Buttrick v. Holden*, 8 Cushing, 233.

The principles governing cases like the present are very clearly illustrated in the case of *Phelps v. Harris*, 101 U. S. Sup. Ct. Rep., 370. In that case Phelps and wife, in 1871, exhibited a bill in the Chancery Court of Mississippi against Harris and wife to remove a cloud from the title of the plaintiff, arising out of supposed defects in a partition made *in pais*, under a will.

The defendants relied upon the validity of the partition and will, and the question was fully contested; and in 1873 a decree was made dismissing the bill.

That plaintiff thereupon brought ejectment against the said defendants for the same land, and in that action the State court decided that the decree in the chancery suit did not render the controversy *res judicata*; although that decree was simply one of dismissal, "without words of qualification as *without prejudice*," &c., in the language of the Supreme Court in *Durant v. Essex*, 7 Wall., 100, quoted by the appellant.

An appeal was taken from this judgment of the Mississippi court in the ejectment suit, to the Supreme Court of the United States, and Mr. Justice Bradley, speaking for that court, in affirming the judgment cites the

opinion of the appellate court of the State delivered in the equity cause, as showing the scope and extent of the decree in that stage of the controversy, and the point really intended to be settled by that decision.

This very recent utterance of the Supreme Court in our judgment fully sustains the ruling of the court below in the present case.

We have been at special pains to examine the various questions presented by this record, because the appellant has appeared before us in proper person, and without the aid of counsel, to enforce by oral argument the extensive and carefully prepared brief filed in his behalf.

His cause has received full consideration at our hands, and has in no degree suffered from any want of acquaintance on his part with the usages of the court.

For the reasons given, we think the rulings below should be affirmed.

## United States Supreme Court.

No. 78 — OCTOBER TERM, 1892.

THE TOWN OF THOMPSON, IN THE COUNTY OF SULLIVAN, Plaintiff in Error,

v.

ORLANDO PERRINE.

*In Error to the Circuit Court of the United States for the Southern District of New York.*

*Thompson v. Perrine*, 103 U. S., 806, followed.

Overdue coupons of municipal bonds which have not matured are negotiable by the law merchant.

The right of the owner of coupons payable to bearer or to the holder thereof to sue in the federal court does not depend upon the citizenship of any previous holder. He is not an assignee within the meaning of the act of March 3, 1875.

Mr. Justice HARLAN delivered the opinion of the Court.

In *Thompson v. Perrine*, 103 U. S., 806, we affirmed a judgment of the Circuit Court of the United States for the Southern District of New York, against the town of Thompson, in that State, for the amount of certain coupons of bonds, executed in behalf of that town, by virtue of the provisions of an act passed May 4th, 1869, and amended April 1st, 1869. Those acts, as will be seen from the statement of the former case, authorized the town of Thompson, in aid of the construction of a railroad from Monticello, New York, to Port Jervis, in the same State—a majority of its tax-payers, appearing upon the last assessment-roll, and representing a majority of the

taxable party, not including lands of non-residents, having first consented to the debt being contracted—to issue bonds, and to invest the proceeds, when disposed of, in the capital stock of the railroad company organized to construct the proposed road. Bonds were issued, and instead of selling them and investing the proceeds in the company's stock, the local authorities exchanged them directly with the railroad company for stock. This, according to certain decisions of the highest court of New York, was in violation of the act giving authority to issue the bonds. But, by an act passed April 28th, 1871—previous to which time the bonds had been issued and delivered—that exchange for stock was, in express terms, ratified and confirmed. And the controlling question in the former case was as to the constitutional validity of the latter statute. In *Horton v. Town of Thompson*, 71 N. Y., 513, decided January, 1878, the court of appeals of New York held, that as the tax-payers had only consented to an issue of bonds, the proceeds of the sale of which should be invested in stock, it was beyond the power of the legislature to validate bonds, which in violation of the act under which they were issued, were not sold, but were directly exchanged for stock, of which fact all purchasers had notice from the recitals of the bonds themselves. That adjudication, it was contended, was binding upon this court. But to that proposition we declined to give our assent, and stated, with some fullness, the reasons why this court could not give to the decision in *Horton's* case the effect claimed for it by the town.

We held, for reasons which need not be repeated, that it was within the constitutional power of the legislature of New York to pass the curative statute of April 28th, 1871, and that from the moment it was enacted (if not before) the bonds, by whomsoever held, whether by the railroad company or others, became binding obligations upon the town, as much so as if they had originally been sold and the proceeds invested in stock of the railroad company, as required by the acts under which they were issued.

That decision controls the present case, for the latter, in its essential features, differs from the former only in the circumstances of the time when Perrine acquired title to the coupons in suit. Those heretofore sued on were purchased by him in 1875, while those now in suit were purchased by him in 1878, when they were overdue, and after the decision in 71 N. Y. was announced. Counsel for the town now insist that this court should follow the ruling in that case, at least as to holders of

coupons or bonds who purchased after *Horton v. Town of Thompson* was decided; and they suppose that this court pleaded its former decision upon the ground mainly that Perrine purchased the bonds there in suit before the court of appeals declared the act to be unconstitutional. But in this view we do not concur. The reference, in the former case, to the date when Perrine purchased, was to illustrate the injustice which would be done were we, in opposition to our own view of the law, to follow the ruling of the State court made after he purchased—a decision which, with entire respect for the State court, was held not to be in harmony with its former decisions. What we decided was that the curative statute was within the limits of legislative power, and that, at least from its passage, the bonds, by whomsoever held, whether by the railroad company or others, became enforceable obligations of the town. *Mitchell v. Burlington*, 4 Wall., 274-5; *Taylor v. Ypsilanti*, 105 U. S., 60; *Ohio L. & T. Co. v. Debolt*, 16 How., 433.

There is, however, one point made in this case, not made in the former one, and which it is our duty to notice. It is, that this action is excluded by statute from the jurisdiction of a circuit court of the United States.

The 11th section of the judiciary act of 1789 declares that no district or circuit court shall "have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." 1 Stat., 78; R. S., § 629. The provision in the act of March 3d, 1875, is: "Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange."

It is not claimed that the words "assignee" and "assignment," as found in the act of 1875, have any meaning different from that attached to the same words in the act of 1789, or in section 629 of the Revised Statutes. But the contention of counsel is that the coupons in suit, being detached from the bonds and overdue when Perrine purchased them, were dishonored, and, therefore, not negotiable by the law merchant; consequently, it is claimed, they are not within the exception of promissory notes negotiable by the law merchant, but are embraced by the general inhibition

upon suits founded on contract where the assignor himself could not have sued in the circuit court.

This position cannot be sustained. It is an immaterial circumstance that the coupons, when purchased by Perrine, were detached from the bonds. And the bonds not having then matured, the coupons, though overdue, had not lost the quality of negotiability by the law merchant. This result must follow from the principles announced in *Cromwell v. Sac Co.*, 96 U. S., 53. Further, and apart from any consideration of the question as to the negotiability, according to the law merchant of these coupons, Perrine is not an assignee within the meaning of the act of 1875, or of the previous statutes relating to the same subject. Giving the words assignee and assignment their broadest signification, and conceding that, in some cases, the holder of a promissory note may become such in virtue alone of an assignment, yet, according to the established construction of the judiciary act of 1789, the right of the holder of a promissory note or bond, payable to a particular person or bearer, to sue in his own name, did not depend upon the citizenship of the named payee or of the first or any previous holder; this, because, in all such cases, the title passed by delivery and not in virtue of any assignment. In *Bullard v. Bell*, 1 Mason, 251, Mr. Justice Story said that to bring a case within the exception contained in the 11th section of the act of 1789, "the action must not only be founded on a chose in action, but it must be assignable; and the plaintiff must sue in virtue of an assignment." "A note," said he, "payable to bearer, is often said to be assignable by delivery; but in correct language there is no assignment in the case. It passes by mere delivery; and the holder never makes any title by or through any assignment, but claims merely as bearer. The note is an original promise by the maker to pay any person who shall become the bearer; it is, therefore, payable to any person who successively holds the note *bona fide*, not by virtue of any assignment of the promise, but by an original and direct promise, moving from the maker to the bearer." In *Bank of Kentucky v. Wister*, 2 Pet., 326, this court said that it had "uniformly held that a note payable to bearer is payable to anybody and is not affected by the disabilities (to sue) of the nominal payee." *Thompson v. Lee Co.*, 3 Wall., 331; *Bushnell v. Kennedy*, 9 Wall., 391; *City of Lexington v. Butler*, 14 Wall., 293; *Cooper v. Town of Thompson*, 13 Blatchford; *Coe v. Cayuga Lake R. R. Co.*, 19 Blatch., 522.

The coupons here in suit are payable to the

holder thereof, and, upon the authority of the adjudged cases Perrine is not an assignee within the meaning of the act of 1875. He is entitled to sue without reference to the citizenship of any previous holder.

We perceive no error in the record and the judgment must be affirmed.

It is so ordered.

#### Liability of Stockholders.

##### *New York Marine Court.*

J. VAN VECHTEN OLCOTT, as Receiver, &c.,  
against JAMES E. CHANDLER.

In case of the insolvency of a corporation, the capital stock is a fund for payment of its creditors, and a subscriber can secure no preference, but must pay his stock in full, and receive his pro rata dividend through the receiver. A stockholder who has been fraudulently induced to purchase stock is estopped from setting up such a defense, if, since a discovery of the facts, he has acted as director.

HAWES, J.—The briefs of counsel submitted in this case are too voluminous to be clear, but I infer from the pleadings and the general scope of the argument, that the following are the points in controversy:

1st. The effect of the pleadings as determining the burden of proof. 2d. As to whether the equities existing in behalf of the defendant are available against the receiver. 3d. As to the effect of the acts of the defendant as creating an estoppel.

The plaintiff, who is receiver of the Brittenstene Mining Company, brings the action to recover of defendant the sum of \$1,250, being the unpaid balance on a certain promissory note made by defendant to the order of the company and the property of the company at the time when the receiver was appointed.

The defendant admits all the allegations of the complaint, but declares that the note was given to the company in payment for stock purchased from the company; that he was misled as to the character of the stock by fraudulent representation of one of its officers, and he asks that it be adjudged that the note be delivered up to be cancelled and for judgment on his counter-claim for \$1,750, the amount already paid.

While it is true that the action is merely upon the note, I am unable to see how the defense can be maintained, unless upon the theory that he became a stockholder to the extent of \$3,000 through fraud and deceit, and his prayer that the contract so made should be cancelled and declared void is wholly inconsistent with any other theory. It is clear to my mind that the defense is an affirmative one, and that he substantially defends as a stockholder whose liability on his stock is un-

paid, and which liability is now virtually in controversy.

The admissions of the answer are clearly available to the plaintiff. *Eaton v. Wells*, 82 N. Y., 576.

Assuming the fact to be as above stated, is the defense of fraud good as against the receiver? It is clear that it would be an available defense, so far as this phase of the case is concerned, if the corporation had brought the action before insolvency; and in general terms it may be said that the receiver has no higher title than the original company, and he would take subject to such legal and equitable setoffs as defendant had against it. The cases cited by plaintiff (*Osgood v. Ogden*, 4 Keyes, 70; *Chubb v. Upton*, 95 U. S., 665; *Ogilvie v. Knox Ins. Co.*, 22 How. U. S., 380.) are in apparent conflict, with the general principle above set forth, and with the numerous cases cited by defendant (*Devendorf v. Beardsley*, 23 Barb., 656; *Bedell v. North American Life Ins. Co.*, 7 Daly, 278; *Bell v. Shebley*, 33 Barb., 610.) The former cases held, in effect, that the receiver shall marshal all the assets, and that the recovery would not be subject to counterclaims existing in behalf of the defendant against the original company.

It is suggested by defendant that this view of the law is countenanced by reason of the fact that the statutory provisions of the bankrupt act and insolvent acts would seem to warrant it, but Mr. Justice Miller, in *Sawyer v. Hoag*, (17 Wallace, 619), expressly negatives this assumption, and declares that "the result would be the same if the corporation was in the process of liquidation, or in the hands of a trustee, or under other legal proceedings." This apparent conflict of authority upon this question does not arise so much from any statutory provision, either Federal or State, but it will be found I think to exist in the subject-matter of the controversy, and the distinction here referred to will be quickly recognized. In ordinary claims the receiver merely represents the title and interest of the company, and all set-offs and counterclaims would be available; but in regard to shareholder's liability the rule may be found to be different.

It is a well-settled principle in American decisions (and Mr. Thompson, in his work on the liability of stockholders, claims that it is purely American) that the capital stock of a corporation is to be deemed a trust fund for the payment of the debts of the corporation, so that the creditors have a lien or right of priority of payment on it in preference to any of the stockholders of the corporation. (See *Wood v. Dunner*, 3 Mason, 308.) If this prin-

ciple is accepted it necessarily follows that there is no mutuality existing which would warrant a set-off, inasmuch as such a defendant the receiver solely represents the creditors. The capital stock being a trust fund, is to be devoted exclusively to the payment of creditors, and its distribution must be made equally among all the creditors; and even if such delinquent subscriber would be deemed a creditor, he would have no claim in law or equity to be fully paid, or to have any priority over others, as to time or amount. Whatever his rights prior to insolvency, he clearly is subject to the general rule affecting such a fund when the company is in liquidation. The capital stock of the company is the fund out of which the creditors are to be paid, and I cannot conceive that it would make any difference whether this money was paid at the date of the organization—and the defendant was an incorporator of the company—or subsequently, and the defendant a mere stockholder. It is clear that in either case the defendant could not withdraw any portion of the capital he has paid in, and there is no possible ground to make any distinction in a case where the company, having disposed of stock, holds the notes of defendant instead of cash. If he could withdraw cash paid in he cannot certainly his notes, which as to creditors, in this connection, is cash, as it is an integral part of the capital of the company.

The principal underlying this view is fully discussed by Judge Comstock in the case of *Lawrence v. Nelson* (21 N. Y., 165): "If notes are substituted for cash in making up the capital, the result is still the same." It cannot be claimed that the principle is inapplicable to the case at bar, for the company sold directly to Chandler the shares constituting a part of the capital stock, and the cash so lodged in the treasury of the company is the fund to which the creditors must look for the payment of their claims. If these facts are admitted, it seems clear to me that the decisions which hold that a receiver has higher rights than the original company are applicable to the case at bar, by reason of the relation of the parties and the subject-matter of the controversy. *Sawyer v. Hoag*, 17 Wallace, 619; *Ogilvie v. Knox Ins. Co.*, 22 How. U. S., 380; *Litchfield Bank v. Church*, 29 Conn., 137; *Osgood v. Ogden*, 4 Keyes, 79.

It appears that the note in question was transferred to the company on or about the 1st of April, 1881, and the allegation as to the character of the stock were presumably made at the time. In so far as appears from the case submitted, the defendant took no action to inform himself of the truthfulness of

these representations, and it does not appear that he exercised any diligence to rescind the contract of purchase.

If my view of the effect of the pleadings is correct, it is clearly the duty of the defendant to affirmatively relieve himself from any implied laches in this behalf, and I think he has wholly failed to do so. It further appears that since the discovery he has acted as a director of the company, and united in a circular to the stockholders urging them to make further contributions in order to place the company upon a paying basis. Upon this point it is proper that I should say that I do not fully concur in the views of the plaintiff, as to the effect of such an act, but it is sufficient to say that it is quite conclusive upon the defendant upon the question of rescission, and of his election to abide by his contract for it can hardly be claimed that while acting as a director he was not a stockholder. 2 R. S., 7th ed., p. 1732, sec. 3.

The case of *Ruggles v. Broek*, (6 Hun., 164), would seem to be clearly in point upon this branch of the case, and if my view of the relation of the receiver, discussed above, is correct, it cannot be held, as suggested by defendant's counsel, that the case of *Ruggles v. Broek* was not well considered in its full effect, and conclusive upon the defendant.—[*N. Y. Daily Register*.]

## The Courts.

### U. S. Supreme Court Proceedings.

MARCH 6, 1883.

John C. F. Gardner, of New York City, was admitted to practice.

The following cases were dismissed.

No. 204. *J. A. Hawley, County clerk, &c., v. The U. S. ex rel. A. T. Post*. C. C. U. S. N. D. of Ill.

No. 527. *The Board, &c., of Brooklyn et al. v. The U. S., ex rel. The Aetna Life Ins. Co.* C. C. U. S. N. D. of Ill.

No. 3. *The Cincinnati and Chicago Air Line R. R. Co. v. James Pullan, trustee, &c.* C. C. U. S. D. of Ind.

No. 184. *James Pullan trustee, &c., v. The Cincinnati and Chicago Air Line R. R. Co.* C. C. U. S. D. of Ind.

No. 258. *The Pittsburg, Cincinnati and St. Louis R. R. Co. et al. v. The Columbus, Chicago and Indiana Central R. R. Co. et al.* C. C. U. S. D. of Ind.

No. 376. *The Columbus, Chicago and Indiana Central R. R. Co. et al. v. The Pittsburg, Cincinnati and St. Louis R. R. Co. et al.* C. C. U. S. D. of Ind.

No. 247. *The Continental Life Ins. Co. v. J. D. Handy et al., Administrator, &c.* C. C. U. S. D. of Ind.

No. 465. *Eugenia Gilppenger v. The Akron Sewer Pipe Co.* C. C. U. S. N. D. of Ohio.

No. 922. *The U. S. v. T. Ford & Co.* Court of Claims.

The following were argued and submitted:

No. 1201. *Madelaide Rôth v. Frederica Ebruan et al.* Motion to dismiss. Supreme Court of Ill.

No. 1141. *Francis Dainese v. John E. Kendam et al.* S. C. Dis. of Col. Motion to dismiss.

No. 694. *The City of Ottawa v. Wm. H. Gary.* C. C. U. S. N. D. of Ill. Motion to re-submit.

No. 713. *C. A. Arthur, late collector, &c., v. David Fox et al.* C. C. U. S. S. D. N. Y.

No. 535. *E. A. Merritt collector, &c., v. Alphonse Stephani et al.* C. C. U. S., S. D. N. Y.

No. 711. *E. A. Merritt, collector, &c., v. Joseph Park, jr. et al.* C. C. U. S., S. D. N. Y.

No. 1126. *Thomas Cochran et al. v. Augustus Schell, late collector, &c.* C. C. U. S., S. D. N. Y.

No. 1127. *Augustus Schell, late collector, &c., v. Thomas Cochran et al.* C. C. U. S., S. D. of N. Y.

MARCH 7, 1883.

The following cases were dismissed:

No. 251. *The Chicago, Milwaukee and St. Paul R. R. Co. v. August Dittberner.* C. C. Columbia Co. Wis.

No. 1224. *The town of Prairie v. Smedley Darlington.* C. C. U. S., S. D. of Ill.

No. 175. *Juffen S. Ramsey v. Josiah H. Demby.* C. C. U. S., E. D. of Ark.

The following were argued and submitted.

No. 66. *The Manhattan Medicine Co. v. Nathan Wood et al.* C. C. U. S., D. of Maine.

No. 176. *E. S. Jaffray and Co. et al. v. McGhee Snowden and Violett et al.* C. C. U. S., E. D. of Ark.

No. 177. *Geo. W. Hill v. G. F. Harding et al.* S. C. of Ill.

MARCH 8, 1883.

No. 180. *James S. Whikins v. Semple Ellett, administrator, &c.* C. C. U. S., W. D. Tenn. Argued and submitted.

MARCH 9, 1883.

No. 115. *The Cook County National Bank v. The U. S.* C. C. U. S., N. D. Ill. Argued and submitted.

No. 135. *Neal Ruggles v. The people of the State of Ill.* S. C. of Ill. Argued and continued.

MARCH 12, 1883.

No. 160. *The N. Y. Guaranty and Indemnity Co. et al. v. The Memphis Water Co. et al.* C. C. U. S., W. D. of Tenn. Decree affirmed. Opinion by Mr. Justice Bradley.

No. 159. *The U. S. v. The Steamer Nuestra Senora de Regla, &c.* C. C. U. S., S. D. N. Y. Decree reversed and cause remanded. Opinion by Mr. Chief Justice Waite.

No. 173. *The County of Morgan v. Charles F. Drake.* C. C. U. S., W. D. Mo. Judgment affirmed. Opinion by Mr. Chief Justice Waite.

No. 1152. *The Union Trust Co. of N. Y. v. E. E. Souther & Bro.* C. C. U. S., S. D. Ill. Decree affirmed. Opinion by Mr. Chief Justice Waite.

No. 1151. *The same v. Edward Fitzgerald.* C. C. U. S., S. D. Ill. Decree affirmed. Opinion by Mr. Chief Justice Waite.

No. 1150. *The same v. John Walker.* C. C. U. S., S. D. Ill. Decree affirmed. Opinion by Mr. Chief Justice Waite.

No. 1017. *John Crossley & Sons v. The City of New Orleans et al.* S. C. of Louisiana. Dismissed. Opinion by Mr. Chief Justice Waite.

No. 8. *Original ex parte.* In re Canada South-



ern Railway Co., petitioner. Leave granted to file petition for writ of mandamus.

No. 9. Original ex-parte. In re William G. Warden et al. petitioners. Same.

No. 974. Asapel Gage v. Harmon Pumpelly et al. C. C. U. S., N. D. Ill. Motion to dismiss argued and submitted.

No. 1225. John Lill et al., Executors, &c., v. Maria B. Pumpelly et al. executrix. C. C. U. S., N. D. of Ill. Dismissed per stipulation.

No. 135. Neal Ruggles v. The people of the State of Ill. S. C. of Ill. Argued and submitted.

No. 179. The Memphis and Charleston R. R. Co. v. The U. S., C. C. N. G. W. D. Tenn. Argued and submitted.

MARCH 13, 1883.

No. 575. Lydia A. Maynard v. Thomas B. Valentine. S. C. Wash. Ter. Dismissed per stipulation.

No. 116. Narcissa Scruggs et al. v. The Memphis & Charleston R. R. Co. et al. D. C. U. S., N. D. of Miss. Argued and submitted.

No. 1041. Charles F. Kring v. The State of Mo. Supreme Court of Mo. Argued and submitted. W. B. Sanborn of N. Y. City was admitted to practice.

No. 863. William C. Walsh, Commissioner, &c., v. William Preston. C. C. U. S., N. D. Texas. Argued and submitted.

No. 864. Wm. Preston v. Wm. C. Walsh Commissioner, &c. C. C. U. S., W. D. Texas. Same.

No. 174. The St. Paul and Chicago R. R. Co., v. Samuel McLean. C. C. U. S., D. N. Y. Same.

No. 178. The U. S. v. Frank Phelps et al. C. C. U. S., S. D. N. Y. Same.

No. 181. Phillips County v. Francis B. Loomis. C. C. U. S., E. D. of Ark. Dismissed.

No. 182. Phillips County v. L. Matthews et al. C. C. U. S., E. D. of Ark. Dismissed.

MARCH 15, 1883.

H. H. Ingersol of Knoxville, Tenn. was admitted to practice.

Nos. 152, 406, 407, 408, 409, 410 and 411. Arguments commenced.

#### **SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.**

MARCH 7, 1883.

John H. Flagg v. Geo. E. Kirk. Argued and submitted.

MARCH 8, 1883.

Charles M. Stewart v. David W. Reed et al. Motion to dismiss, overruled.

District of Columbia v. J. H. Johnson et al. Continued on motion of defendants.

MARCH 9, 1883.

U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen. Postponed to March 15, 1883.

Clifton Anderson et al. v. William Smith. Motion for rehearing overruled.

Elihu E. Jackson et al. v. Mary G. Schulze. Argued and submitted.

A. Runstetter et al. v. James W. Atkinson et al. Notice to defendants of a motion to set aside decree of general term, and for leave to file a supplemental decree.

MARCH 12, 1883.

Andrew Runstetter et al. v. James W. Atkinson et al. Motion for leave to file supplemental bill granted.

U. S., ex rel. Charles T. Havener, v. Samuel Cross

Treasurer, &c. Demurrer overruled, respondent required to file answer to petition.

Charles M. Stewart v. David W. Reed et al. Motion to dismiss appeal overruled.

Charles T. Davis v. Edgar Speden. Mandate S. C. U. S., affirming decree of special term and remanded to special term to carry it into execution.

MARCH 13, 1883.

H. Clay Stewart v. Edward G. Elliot. Judgment of Special term affirmed.

U. S. v. The National Bank of the Republic. Judgment of special term reversed and remanded for new trial.

Charles M. Stewart v. David W. Reed. Judgment of Special term affirmed.

MARCH 14, 1883.

George W. Yeabower et al. v. Helen R. Kengla. et al. Argued and submitted.

George W. Yeabower et al. v. Helen R. Kengla et al. Decree reversed, decided that deed of trust executed by Louisa Yeabower is valid. That Louisa Yeabower had no power by will to dispose of real estate coming to her under the will of Christopher Yeabower.

MARCH 16, 1883.

John H. Voorhees, of New York, was admitted to practice.

U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen. Argued and submitted.

#### **EQUITY COURT.—Justice James.**

MARCH 8, 1883.

Mackall v. Mackall. Commission to take testimony of non-resident witness ordered.

Taylor v. Ryan. Guardian ad litem appointed. Millard v. Wylie. Decree pro confesso against J. C. Willard.

Chase v. Chase and Poiner v. Poiner. Sales ratified nisi.

Conlon v. District of Columbia. Decree pro confesso against some of defendants.

McLaughlin v. Carrico. Same against James Carrice.

Payne v. Payne. Same against Payne, and reference.

Wiley v. Wiley. Same against defendant Wiley, and reference.

Vincent v. Vincent. Leave to file cross bill granted.

Hoover v. Marr. F. Beall, allowed to become party complainant.

Penn v. Walsh, and Gersdorf v. Gersdorf. Testimony ordered taken.

Nolte v. Nolte. Rule on complainant granted. Godfrey v. McMichael. Withdrawal of money from registry allowed.

Palmer v. Bowers, and Stroud v. Stroud. Appearance of absent defendants ordered.

MARCH 9, 1883.

Keyser v. Halstead. Trustee appointed. Worthington v. Reed. Sale ordered and trustee appointed to sell.

Ritchie v. Shoemaker. Trustee authorized to execute deed.

Hollidge v. Rawlings. Decree made absolute. Marshall v. Harless. Sale ordered and trustees appointed to sell.

Hamilton v. Morrison. Reference to auditor ordered.

Stepenson v. Ford. Auditor's report confirmed.  
 Eaton v. Eaton. Leave to complainant to apply proceeds for the benefit of infant defendants.  
 Douglas v. Langford. Decree pro confesso ordered.

Rosenberg v. Rosenberg. Appearance of absent defendant ordered.

Quill v. Looney. Sales confirmed.

Sisson v. Sisson. Testimony before examiner ordered taken.

MARCH 10, 1883.

Ourand v. Ourand. Guardian ad litem appointed.

Anderson v. Howgate. Auditor's report confirmed, &c.

Wood v. Wood. Testimony ordered taken.

MARCH 12, 1883.

Ritchie v. Shoemaker. Amendment of decree ordered.

Garrison v. Garrison. Decree pro confesso against defendants ordered.

Clark v. Howard. Same against defendant John Howard and wife ordered.

Foster v. Foster. Leave to file amended and supplemental petition granted.

Dodge v. Offley. Part of proceeds of sale ordered paid to trustee.

Sibley v. Sibley. Testimony ordered taken.

Langley v. Ferry. Trustee authorized to receive cash.

Collins v. Johnson. Restraining order discharged and injunction denied. Leave granted to allow exhibit to be withdrawn from file.

Taylor v. Taylor. Divorce granted.

Wilson v. Wilson. Testimony ordered taken.

Smith v. Buven. Guardian ad litem appointed.

#### CIRCUIT COURT.—Justice Mac Arthur.

MARCH 10, 1883.

Marvin Eastwood v. Frank Echelberger et al. Judgment for \$100.

Wm. E. Clark v. Frank J. Augusterfer. Judgment on award for \$1,065.29.

The Cin. Times Star Co. v. William T. Fitzgerald. Judgment for want of plea.

David A. Windsor et al. v. Charles T. Davis. Same.

Geo. J. Johnson v. Anson S. Taylor. Two cases. Demurrers overruled. Appealed.

John W. Thompson v. Alexander R. Shepherd. Motion for new trial overruled. Appealed.

David Hoffer & Co. v. Jared D. Bitting. Leave to withdraw notes from the files.

Catharine A. Wyndhaus v. Thaddeus Buchanan. Judgment set aside and new trial granted.

Sidney T. Nimmo v. Chauncey J. Reed. Motions overruled and leave granted defendant to plead.

Charles Weeks v. Clayton McMichael. Motion to quash writ of replevin overruled.

Mary E. Chandler v. Clayton McMichael. Same.

Moses H. Page, trustee, v. Elizabeth Wright. Judgment for plaintiff for one cent damages for want of plea.

Tindall E. Alexander v. Dist. of Col. Exception to award sustained and award set aside.

Francis Prott v. Jacob Roth et al. Judgment for want of affidavit.

Elson H. McEwens, &c., v. Frederick W. Helbig, &c. Judgment for want of plea.

Joseph E. Straus et al. v. Edward A. Saunders. Judgment for want of plea.

Emanuel Hecht v. Geo. Godfrey. Motion to retax cost.

Conway Robinson v. Dist. of Col. Demurrer to plea sustained.

Conway Robinson v. Josiah Dent et al. Same. Patrick Hassett, &c., v. The Balt. & O. R. R. Co. Leave to amend declaration.

Wm. T. Johnson v. Frederick Douglass. Motion to retax cost overruled.

Jacob Rich v. A. King Chandler. Motion to quash attachment overruled.

Butler, Clapp & Co. v. Nani Gutman. Motion for judgment overruled.

Balters & Drake v. W. H. Cissell & Co. Motion for new trial overruled.

Wm. H. Cissell & Co. v. Geo. W. Utermehle, Same.

National Bank of the Republic v. Frank Hume et al. Ordered that the witnesses be examined in open court.

MARCH 12, 1883.

George Dearing et al. v. Thomas D. Lewis. Judgment for want of plea.

MARCH 13, 1883.

Emanuel Hecht v. Geo. Goldberg. Motion for new trial on exceptions.

John Pole, etc., v. The Wash. & Geo. R. R. Co. Motion for new trial.

#### CRIMINAL COURT.—Justice Wylie.

MARCH 1, 1883.

Re-direct examination of Rerdell, by the prosecution and cross-examination by the defense. James W. Bosler, of Carlisle, Pa. Charles H. Irving, John Spellman, Mrs. Alice C. Cushman, Mrs. M. C. Rerdell, J. W. Donnelly and Charles E. Gibbs, were called and testified.

MARCH 2, 1883.

Charles H. Hooper, Millie H. Smith, Call McClelland, Isaac Cable, John C. Calvert, Mr. Lounsberry and A. E. Boone, were examined for the prosecution. The court held that it was not proper on cross-examination for the defense to show that a witness received largely in advance of his legal fees for attendance. Adjourned to March 6, 1883.

MARCH 4, 1883.

A. E. Boone, E. F. Barbank, A. M. Gould, and Major Chamberlin, were examined on the part of the prosecution, when the prosecution closed.

MARCH 7, 1883.

James B. Bellford, testified for the defense. The witness was not allowed to answer a question whether he had received any money from one of the defendants in consideration of what he did in this matter for answering said question after he left the witness stand he was fined for contempt of court.

H. M. Teller and John H. Olcott were called to the witness stand and examined. The court said that there was no law to compel the department to bring papers into court but if the counsel for the defense showed they wanted a particular paper and the government was withholding it he would suspend the court until it was produced.

MARCH 8, 1883.

Nelson A. Miles and Hannibal D. Norton, were examined and testified for the defense.

MARCH 9, 1883.

Thomas M. Bowen was called to the stand and was examined by the counsel for the defendants.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

MARCH 3, 1883.  
24304. Charles C. Bryan v. Alice E. Gorter. Account, \$173.96. Plffs atty, F. P. B. Sands.  
24305. The Trustees of Corcoran Gallery of Art v. John T. Brewster. Acc't. rent, \$240. Plffs atty, O. M. Matthews.  
24306. Tyasowski Bros. v. J. F. King. Note, \$108.93. Plffs attys, Ross & Dean.  
24307. Edward T. Woody v. Daniel Casey. Note, \$99.05. Plffs atty, E. F. Jackson.

MARCH 3, 1883.  
24308. James Robbins v. John A. Carr. Notes and account, \$223.93. Plffs attys, Wilmarth and Browne.  
24309. Thomas Worthington v. Edward W. Keightly. Damages, \$50,000. Plffs atty, J. Ambler Smith.

MARCH 10, 1883.  
24310. Sarah Angney v. Clayton McMichael. Replevin. Plffs atty, J. A. Johnson.

MARCH 12, 1883.  
24311. L. Johnson & Co. v. William O. Murdock. Note, \$1,560. Plffs attys, Carusi & Miller.  
24312. Elias B. White v. Jacob F. Cake et al. Note, \$212.20. Plffs attys, Carusi & Miller.  
24313. Chase Roys v. William Gibbons. Judgment of Justice Moses, \$75.

24314. Joseph Frather v. Henry Johnson. Acc't., \$572.67. Plffs atty, W. P. Bell. Defs atty, F. W. Jones.  
24315. Same v. John H. Johnson. Note \$645.85. Plffs atty, same.

MARCH 13, 1883.  
24316. Same v. Luke O. Strider et al. Judgment of Justice Willson, \$50. Plffs atty, same.

24317. Morris Rubens v. Adolph Damman. Check and account, \$305.88. Plffs attys, Albert & Warner.

24318. Henry Levy & Son v. O. Damman. Account, \$265.93. Plffs attys, Albert & Warner.

24319. Columbus Alexander v. Thomas J. Mackey. Check, \$125. Plffs atty, F. E. Alexander.

24320. Isaac Kobliner et al. v. Kaspar Kneest. Account, \$89.85. Plffs atty, Wm. H. Browne.

MARCH 14, 1883.  
24321. John Hoover v. John H. Falvey. Note, \$454.62. Plffs atty, F. W. Jones.

24322. Wm. H. Main & Bros. v. George Bonifant. Acc't., \$28,700. Plffs attys, Cook & Cole and J. P. Jordan.

24323. The United States of America v. Albert E. Boone et al. Bond, \$12,000. Plffs atty, Geo. B. Corkhill.

24324. Same v. Same. Bond, \$7,000. Plffs atty, same.

24325. Same v. Same. Bond, \$600. Plffs atty, same.

24326. John N. Oliver et al. v. Clayton McMichael. Replevin. Plffs atty, J. B. Swat.

24327. Columbus Alexander v. William Campbell. Account, \$1,656.30. Plffs atty, F. E. Alexander.

24328. William F. Dixon et al. v. John R. Marbury. Note and account, \$1,211.44. Plffs attys, Hanna & Johnston.

24329. Jacob H. Kengla v. Michael Oppenheimer. Note, \$100. Plffs attys, Carusi & Miller.

24330. Same v. John B. Wiseman. Note, \$442.75. Plffs atty, same.

MARCH 15, 1883.  
24331. Albert Erdman v. The District of Columbia. Appeal. Defs atty, A. G. Riddle.

### IN EQUITY.—New Suits.

MARCH 9, 1883.  
24332. Thomas H. Cain et al. v. George F. T. Cook. To substitute trustee. Com. sol., Voorhees & Singleton.  
24333. Rebecca Rosenberg v. Albert D. Rosenberg. For divorce. Com. sol., O. M. Matthews.

24334. George Brent, alleged lunatic upon petition of Clementia D. Brent, de lunatico inquirendo. Com. sol., Chas. A. Elliot.

MARCH 10, 1883.  
24335. Mary I. Holmes v. George Holmes. For divorce. Com. sol., Elliot & Robinson.

MARCH 12, 1883.  
24336. Anna E. Barnard et al. v. Jane B. Barnard. To sell. Com. sol., E. Coyle.

MARCH 14, 1883.  
24337. Francis Brown v. George Brown et al. To encumber infant real estate. Com. sol., E. J. Murray.

24338. Ella B. Risdon et al. v. Ambrose H. Naton et al. Partition. Com. sol., W. P. Ball.

24339. Marry E. Byrns v. Maria Berry et al. To restrain sale. Com. sol., F. P. B. Sands.

24340. May E. Fitzgerald v. Alexander Fitzgerald. For divorce. Com. sol., E. D. Mussey.

24341. Ella P. Richardson v. James P. Richardson. For divorce. Com. sol., H. B. Morison.

### PROBATE COURT.—Justice James.

MARCH 1, 1883.  
Estate of Charles W. Muhlaly. Inventory returned by administrator.

MARCH 2, 1883.  
Estate of Catherine Wood Jones. Administrator bonded and qualified.

Will of Sarah W. Parris. Filed for probate.  
Copy of will of Hattie V. Bennett. Filed and recorded.

Anson S. Taylor, bonded as guardian to orphans of William A. Sorrell.

Will of Charles A. Watts. Filed for probate, order of publication returnable March 30, 1883.

Estate of Frank F. Hill. Executrix authorized to sell certain property.

Estate of Jordan W. Maury. Will proved, &c.  
Estate of Daniel Kolb. Petition and order to sell stock.

Will of Joseph O. Pearson. Filed for probate and proved by one witness.

Estate of Mary Linger. Administrator appointed and bonded.

Estate of William E. Hawes. First account of executrix passed.

Estate of David Hamiter. Order of publication returnable March 30, 1883.

Rosalie Gans. Bonded as guardian to Millie and Solomon Gans.

Wm. T. Ford. Bonded as guardian to William Gettinger.

Estate of William Orme. First account of executors passed, &c.

In re caveat to solicitor of John H. Wheeler, on hearing for petition for issue to circuit court.

Estate of James F. McGuire. Motion to increase administrator's bond filed, &c.

Will of Cecilia Cain. Filed for probate.  
Estate of William Anderson. First account of Administrator passed.

MARCH 3, 1883.  
Estate of Jordan W. Maury. Executor bonded and qualified.

Will of Cecilia Cain. Exhibited and proved.  
Sundry accounts of executors, administrators and guardians passed.

MARCH 5, 1883.  
Will of John G. Killian filed.

Will of John Garvin. Proved by one witness.  
Estate of Serena Mason. Receipt of trustee filed.

Estate of Wm. Anderson. Inventory returned by administrator.

MARCH 6, 1883.  
Will of John Keefe. Filed and proved.

Will of Joseph O. Pearson. Fully proved by third witness.

Will of Mary F. Woods. Filed for probate.

Will of John Garvin. Proved by third witness.

Estate of Michael Shiner. Administrator, d.b.n. bonded.

Estate of Elizabeth Cunningham. Petition of administrator for instructions.

Estate of Henderson Fowler. Receipt of distributions filed.

Estate of Chauncey Smith. Notice to administrator appointing time for settlement.

MARCH 7, 1883.  
Estate of Elizabeth Adams. Inventory returned by administrator w. s.

Estate of Emeline Carter. Proof of publication filed.

Estate of Geo. Gordon. Will filed for probate.

Estate of Hugh Kandier. Proof of publication filed; will admitted to probate, and record and letters granted.

MARCH 8, 1883.  
Estate of John Keefe. Petition for letters of administration, c. t. s.

Estate of Anthony Mutchy. Inventory returned by administrator, w. s.

Will of Louisa Joachim. Filed for probate.

MARCH 8, 1883.  
Estate of John P. Sherburne. Final notice to be published.

Mary E. Ferguson, guardian v. John W. Collins. Answer filed, argued and submitted.

In re Will of John G. Killian. Declination of executor to act filed.

Will of Frank Waldecker. Filed for probate.

Estate of James F. McGuire. Order increasing administrator's bond recorded.

Estate of Thomas Lewis. Order to invest money in United States bonds.

Estate of John Davall. Petition and assent of heirs, and appointing administrator who bonded.

Estate of Anthony Bushy. Petition for approval of sale and authorizing sale of other property at auction.

Estate of Sterling T. Austin. Petition of F. A. Austin and renunciation of widow filed.

Estate of Emeline Carter. Will admitted and letters granted, &c.

Estate of James W. Norton. Petition and appointing of administrator, &c.

*Legal Notice.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 9th day of March, 1883.JAMES K. STICKNEY, Adm'r.  
vs.  
No. 34,383. At Law.

EDWARD M. STICKNEY, Defendant.

On motion of the plaintiff, by Mr. Selden, her attorney, and it appearing to the court, that a summons for the defendant has been duly issued and returned "Not to be found," it is, this 9th day of March, 1883, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty day after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
A true copy. Test: 11-3 E. J. Margo, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business March 18, 1883.

In the matter of the Estate of S. Louise Yeabower, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by Samuel Maddox and Randall Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business March 18, 1883.

In the matter of the Estate of Moses Ogle, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Samuel K. Bend.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.CATHERINE SHOGGINS ET AL.  
vs.  
No. 777. Eq. Dec.

DANIEL FOGARTY.

The petition of Ellen Walsh, in the above-entitled cause, for a rule upon Christopher Ingle, requiring him to appear on a day certain and show cause why he should not pay to the petitioner the sum of \$17.75, being before the court, and it appearing to the court that the said Ingle is beyond the jurisdiction of the court, it is, this 13th day of March, 1883, ordered, that the said Christopher Ingle, appear before this court on the 15th day of April, 1883, and show cause why the said sum of \$17.75, should not be paid to the petitioner. Provided, this order be published three times in the Washington Law Reporter before said date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 11-3 E. J. Margo, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business March 16, 1883.

In the matter of the Will of Caroline A. Dolbear, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Stillman F. Dolbear.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of April, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

JOHN E. CHAPPELL, Administrator.  
WM. D. CASSIN, Solicitor. 11-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.REBECCA ROSENBERG  
vs.  
No. 3,433. In Equity.

ALBERT D. ROSENBERG.  
On motion of petitioner, Rebecca Rosenberg, by C. M. Matthews, her solicitor, it is by the court this 9th day of March, 1883, ordered, that the defendant, Albert D. Rosenberg, do cause his appearance to be entered in this court at or before the first special term of the court occurring forty days after this date, otherwise it will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice, Jr.  
A true copy. Test: 11-3 E. J. Margo, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emeline Carter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1883.

DORSEY E. W. CARTER, Executor.  
H. O. CLAUGHTON, Solicitor. 11-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry Helmsen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

HENRY H. HELMSEN, Administrator.  
WM. T. BAILEY, Solicitor. 11-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of March, 1883.REKUS FRANK FOSTER, Petitioner  
vs.  
No. 7116. Eq. Dec. 30.

ELLA FOSTER, Respondent.

On motion of the petitioner, by Messrs. Riddle, Davis & Padgett, his solicitors, it is ordered that the respondent, Ella Foster, cause her appearance to be entered to the amended and supplemental petition herein on or before the first rule-day occurring forty days after publication of this order: otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTER, Justice.  
True copy. Test: 11-3 E. J. Margo, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business March 14, 1883.

In the matter of the Estate of John Keefe, late of the District of Columbia, deceased.

Application for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Bridget Keefe, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
P. B. STEINSON, Solicitor. 11-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the matter of the Will of Stephen J. Dallas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eda A. Dallas.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**  
**C. MAURICE SMITH, Solicitor.** 11-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the case of William K. Duhamel, Administrator of John P. Sherburne, late of San Francisco, Cal., deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 10-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Thursday the 8th day of March, 1883.**

**MARY E. STROUD, Plaintiff,**

**No. 8480. Eq. Doc. 22.**

**HARRY E. STROUD, Defendant.**  
On motion of the plaintiff, by Mr. Jno. P. Anderson, her attorney, it is ordered that the defendant, Harry E. Stroud, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. **CHAS. P. JAMES, Justice.**  
True copy. Test: 10-3 **E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, March 6, 1883.**

**JOSEPH SYKES**

**No. 8475. Equity.**

**MARY ANN SYKES.**

On motion of the petitioner, by O. S. Bundy, his solicitor it is ordered that the defendant, Mary Ann Sykes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 10-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**CHAS.**

**No. 8144. In Equity.**

**CHAS. ET AL.**

**W. K. Duhamel, the trustee, having reported a sale of parts of lots 9 and 10, in square 426, being the south part of lot 9, fronting twenty (20) feet on Seventh street, and running the same width, the depth of the lot sixty-six (66) feet and eight (8) inches; and the northern two-and-a-half (2½) inches of lot 10, commencing at the southeast corner of lot 9, and running south two-and-a-half (2½) inches, thence west with a line parallel to the south line of lot 9, being a strip of ground two-and-a-half (2½) inches, fronting on Seventh street and of the same depth as lot 9, to Richard O. Lewis, for \$4,010.**

And also, a sale of part of lot 6, in square 341, beginning at a point on the line of Eleventh street, west, 124 feet 7 inches from the northwest angle of the square and running due south twenty-five (25) feet, due east one hundred (100) feet, thence due north twenty-five (25) feet, thence due west one hundred (100) feet to the place of beginning, to William F. Free, for \$2,810 cash. It is, this eighth day of March, 1883, by the court, ordered that the said several sales be and the same are hereby ratified and confirmed unless cause contrary be shown on or before the ninth day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last mentioned day.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. 10-3 Test: **E. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

**EDWARD L. PALMER ET AL.**

**No. 8442. Eq. Doc. 22.**

**HENRY O. BOWERS ET AL.**

On motion of the plaintiffs, by Mr. McPherson, their solicitor, it is ordered that the defendant, Theodore Van Housen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

**CHAS. P. JAMES, Justice.**

True copy.

Test: **E. J. MEIGS, Clerk.**

**R. W. MCPHERSON, Solicitor.** 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the matter of the Will of Louisa Joachim, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Michael Joachim.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

**CHARLES P. JAMES, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**

**FRANKLIN H. MACKETT, Solicitor for Petitioner.** 10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

9-3

**BARBARA KOCH, Executrix.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Wood Jones, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1883.

**GEORGE H. WOOD, Administrator.**

**EDWARDS & BARNARD, Solicitors.** 9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 2, 1883.**

In the matter of the Estate of David Hamiter, late of Arkansas, deceased.

Application for Letters Testamentary on the estate of the said deceased has this day been made by Rhoda A. Hamiter, of Arkansas.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

**CHARLES P. JAMES, Justice.**

A true copy.

Test: **R. J. MEIGS, Clerk.**

**IVORY G. KIMBALL, Solicitor.** 9-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Montgomery County, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert H. Wyman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1883.

9-3

**CHARLES ABERT, Executor.**

## Legal Notices.

## THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mathias Christmiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1883.

ANTON RUPPERT.

F. MILLER, Solicitor.

8-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day March, 1883.

KATE MARR, guardian of FRANK T. BARRY, Complainant.

FRANK T. BARRY and others, Defendants.

No. 7,022. Eq. Doc. 20.

On motion of the complainants, by Messrs. Riddle, Davis & Padgett, her solicitors, it is ordered that the defendants, Blanche Gost, Henry Robinson, Charles Robinson, Alfreda Robinson and David Robinson, cause their appearance to be entered to the amended bill herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy Test: 8-3 R. J. Maigs, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 23, 1883.

In the matter of the Estate of J. Erhard Mack, late of the city of New York, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James H. Marr, of Washington City.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

W. PIERCE BELL, Solicitor.

8-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. February 23, 1883.

In the case of Thomas E. Waggaman, Administrator of Charles Gordon, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 2d day of March A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 8-3 H. J. RAMSDELL, Register of Wills.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JULIA E. GALLANT

No. 4,866. Equity.

EDWARD GALLANT ET AL.

William G. Gallant, trustee herein, having reported that he has sold lots 23, 23 and the north 3 feet front on Fifth street by 68 feet, 2 and 1/4 inches in depth of lot 24, in Gallant's subdivision of square 479, in the city of Washington, D. C., for \$1,600, in cash, subject to taxes and assessments, to William O. Denison, who is to assume and pay all taxes and assessments on all of said lots 23, 23 and 24:

It is, this nineteenth day of February, 1883, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 22d day of March, 1883. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 R. J. Maigs, Clerk.

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Henderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of February, 1883.

HELEN B. HENDERSON,

MARY E. HENDERSON.

WM. G. HENDERSON, Solicitor.

8-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JAMES T. WARD ET AL.

No. 8,304. Equity.

EDITH WARD ET AL.

James S. Edwards, the trustee herein, having reported a sale of a part of the lots 2 and 3, in the square 294, containing 1,200 square feet of ground, to William B. and Robert Downing, assignees of Daniel J. Macarty, for the sum of \$1,188, also of a part of the said lot 3, in said square, containing 2,028.88 square feet of ground to the said Daniel J. Macarty, for the sum of \$1,843.51, and which said several parts of said lots, are more particularly described in the report of said trustee and the proceedings in this cause:

It is, this 20th day of February, A. D. 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 31st day of March, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 R. J. Maigs, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia,

LOONEY

No. 8,034. Equity.

QUILL ET AL.

AND

QUILL

CONSOLIDATED.

LOONEY ET AL.

No. 8,183. Equity.

R. Byrd Lewis and Wm. Pierce Bell, trustees herein, having reported a sale of parts of lots (13) thirteen and (14) fourteen, in square (624) six hundred and twenty-four, being the east (8), feet front of lot (14) fourteen, and the west (8) eight feet front of lot (13) thirteen, the two parts forming a front on north G street, of (16) sixteen feet and running back with even width one hundred and twenty-four (124) feet; to Dennis Quill, for \$1,600:

And also that the rear part of said parts of lots (13) thirteen and (14), in square (624), six hundred and twenty-four, having a width of (16) sixteen feet and a depth of fifty-one (51) feet and three (3) inches, was sold to Dennis Quill, by them for \$625:

And also a sale of the western part of lot numbered (2) two, in square (679), six hundred and seventy-nine, to Daniel Raidy, for \$625; and that the purchasers of the several parcels have complied with the terms of sale as stated in said report:

It is, this 19th day of February, A. D. 1883, ordered, by the court that the said several sales be and the same are hereby ratified and confirmed unless cause to the contrary be shown on or before the 22d day of March, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 R. J. Maigs, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of February, 1883.

VALENTINE McNALLY

No. 8,407. Eq. Doc. 22.

ELIJAH J. WARD ET AL.

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, Elijah J. Ward and Sarah E. Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 8-3 R. J. Maigs, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jourdan W. Maury, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of March, 1883.

SARAH MARIA MAURY, Executrix.

WM. A. MAURY, Solicitor.

10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n. on the personal estate of Michael Shiner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of February, 1883.

PETER F. LITTLE, Administrator d. b. n.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph O. Pearson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1883.

WILLIAM H. FEARSON.

ANNE S. TAYLOR, Solicitor.

10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

THOMAS F. MORGAN, Plaintiff,

v. No. 23,718. At Law.

ALBERT CINGRIA, Defendant.

On motion of the plaintiff, by Mr. W. F. Macfarly, his attorney, it is ordered that the defendant, Albert Cingria, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

MAO ARTHUR, Justice.

True copy.

Test: 10-3

R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

MARY POWER

v. No. 7,704. Equity.

MARY A. J. POWER ET AL.

Job Barnard, trustee herein, having reported a sale of lot number four (4), and the west ten feet front of lot number three (3), in Davidson's sub-division of lots one (1) and ten (10), in square number three hundred and thirteen (113), in Washington City, in the District of Columbia, to Sarah Green, for \$3,508.33:

It is, this 8th day of March, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court.

CHARLES P. JAMES, Justice.

A true copy.

Test: 10-3

R. J. MEIGS, Clerk.

EDWARDS & BARNARD, Solicitors.

10-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. March 6, 1883.**

In the case of Nathan A. O. Smith, Administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDHELL, Register of Wills.

WM. B. WEBB, Solicitor.

10-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of February, 1883.**

MARIA BERRY

v. No. 2422. Equity Decree, 23.

MARY A. BYRNE ET AL.

The Marshal having returned "not to be found" as to the defendants hereinafter named:

On motion of the plaintiff, by Messrs. F. W. Jones and Thos. Jesup Miller, her solicitors, it is ordered that the defendants, J. Owens Berry, Geo. W. Gannell, Richd. Berry, of Baltimore, Elizabeth Trott, Chas. G. Haslap, Hester King and Philip Dougherty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy.

Test: 9-3

R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 26, 1883.**

In the case of Ferdinand W. Rique, Administrator, c. t. a., of Caroline S. Rique, deceased, the Administrator, c. t. a., aforesaid has, with the approval of the Court, appointed Friday, the 30th day of March, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control: when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 9-3

H. J. RAMSDHELL, Register of Wills.

GORDON & GORDON, Solicitors.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 26, 1883.**

In the matter of the Estate of Martha E. Pophins, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Thomas H. Pophins.

All persons interested are hereby notified to appear in this court on Friday, the 2nd day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: 9-3

H. J. RAMSDHELL, Register of Wills.

B. H. WEBB, Solicitor.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 26, 1883.**

In the matter of the Estate of William D. Allen, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Hellen.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: 9-3

H. J. RAMSDHELL, Register of Wills.

CRITTENDEN & MACKAY, Solicitors.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 2, 1883.**

In the matter of the Will of Charles A. Watts, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Martin F. Morris. All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: 9-3

H. J. RAMSDHELL, Register of Wills.

JOHN B. LARSEN, Solicitor.

9-3



# Washington Law Reporter

WASHINGTON - - - - - March 24, 1883

GEORGE B. CORKHILL - - - EDITOR

THE FOLLOWING act, passed by the late Congress, in reference to gaming in the District of Columbia, is very stringent in its provisions, and seems to cover all conceivable forms of the vice.

An act to suppress gaming in the District of Columbia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every person who shall in the District of Columbia, set up or keep any gaming table, or any house, vessel, or place on land or water, for the purposes of gaming, or gambling device, commonly called A B C, E O, Roulette, Equality, Keno, Thimbles or "Little Joker," or any kind of gambling table or gambling device, adapted devised, and designed for the purpose of playing any game of chance for money or property, or who shall induce, entice or permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall on conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment for a term not more than five years.

SEC. 2. That every person who shall, in the District of Columbia, knowingly permit any gaming table, bank, or device to be set up or used, for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot or other premises to him belonging, or by him occupied, or of which he hath at the time the possessor or control, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment for not more than one year, and by fine not exceeding five hundred dollars.

SEC. 3. That every person who shall, in the District of Columbia, deal, play or practice, or be in any manner accessory to the dealing, playing or practicing of the confidence game or swindle known as three-card monte or of any such game, play or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, and by imprisonment, at hard labor, in the jail of the District, not more than five years.

SEC. 4. That all games, devices, or contrivances at which money or any other thing

shall be bet or wagered shall be deemed a gaming table within the meaning of this act; and the courts shall construe the preceding sections liberally so as to prevent the mischief intended to be guarded against.

Sec. 5. That all laws inconsistent with this act are hereby repealed.

Approved January 31, 1883.

In *Hitchins v. People*, 89 N. Y., 454, the defendant was indicted under an act providing that if any person should keep a room, &c., to be used or occupied for gambling, or if the owner, &c., of any room or building, &c., "shall knowingly permit the same to be used or occupied for gambling," he should, upon conviction, suffer a prescribed punishment.

The evidence showed that parties had played games at the place of the defendant for beer and cigars, which articles were kept there by him for sale, and that upon the termination of the games, he furnished and charged them to the loser. The court below refused to charge the jury that playing such games was not gambling, within the meaning of the statute, and the defendant was convicted. The conviction on error to the court of appeals was held proper. The court, Grover, Judge, delivering the opinion, say that: "Gambling is prohibited, all will agree that gambling for a barrel of beer or a box of cigars is within the statute. It follows that gambling for a gallon or less quantity is within it. No exception is made by the statute on account of the smallness of the quantity, or the use to which it is applied by the winner," and in *People v. Cutler*, 28 Hun., it was held that persons playing pool and bagatelle at a public saloon kept for that purpose, the losers paying for the use of the apparatus or for drinks, are disorderly persons and gamblers.

IN UPHOLDING a conviction in the Court of General Sessions of New York city under an indictment charging one Noelke and others with having sold contrary to law a half ticket in the Louisiana State Lottery, where the principal witness against the defendants, one Mattocks, had purchased the ticket for the purpose of proving the fact of its sale by the defendants, Judge Brady, who delivered the



opinion of the General Term of the Supreme Court, said that Mattocks was not to be regarded as an accomplice whose testimony required corroboration. Upon this subject the judge further added:

"Indeed, it has become a necessity for the suppression of crime to resort to this mode of ascertaining whether a prohibited and criminal act may be committed, the victims of a business which it distinguishes failing in the moral courage to complain or to appear as witnesses. Without its use many crimes would increase in number and magnitude, the law be openly violated, and the authorities helpless from the absence of such proof as may be required for a conviction. The utmost that can be said of the person employed is that he is an informer and leave to the jury the consideration of his evidence."

The *Daily Register*, referring to the opinion of Judge Brady, observes "that there is a plain and broad distinction between an accomplice or accessory who leads into crime an offender against whom he afterwards appears as complainant and witness and the case of an habitual or professed offender whose conviction is had upon evidence obtained by applying to him in the regular course of his illegal traffic and then prosecuting him thereon."

That "in all cases of illegal business the nature of the offense naturally involves a customer in each transaction, and the complainant is none the less a witness competent to prove the transaction because he was supposed by the defendant to be an ordinary customer. The fact instead of impairing the case made increases its force."

1. *Deeds: Covenants of grantee.*—The grantee in a deed, by accepting the same, becomes liable on the covenants purporting to be made by him, as if he had signed and sealed the deed.

2. *Ibid: Grantee assuming mortgage.*—A grantee who assumes a mortgage mentioned in the deed, thereby takes upon himself the duties of the covenantees with regard to the mortgage, and is, therefore, bound to pay the same at maturity.

3. *Ibid: Ibid; breach; damages.*—On breach of such covenant the damages recoverable is the amount due on the mortgage at maturity. [*Sparkman v. Gove*. Sup. Ct of N. J. June Term, 1882. 15 Vroom.]

## Supreme Court District of Columbia JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

FRANK A. COTHARIN vs. ELDRED G. DAVIE.  
AT LAW. No. 23,313.

In an action on a written contract, where an alteration, though fraudulent, is alleged to have been made by one of the parties, testimony that the same party made similar alterations in similar contracts made about the same time with other parties, is inadmissible to prove the alteration of the contract sued upon.

This was an action of assumpsit on a written contract. The defendant pleaded the general issue. The plaintiff offered evidence tending to prove the execution of the contract and rested. The contract appears in the opinion of the court. The defendant offered evidence tending to prove that the contract was altered subsequent to the signing thereof by filling a blank space with the figures 50,000, and further offered testimony to prove that in other contracts of a similar nature made about the same time by the plaintiff with other parties the figures 50,000 were also subsequently inserted in blank spaces. To the admission of this testimony the plaintiff excepted. The court also instructed the jury: "Other witnesses testified that in similar contracts made not about the same time there were similar blanks which are now filled with the figures 50,000, this testimony will tend to enlighten you as to any scheme the plaintiff may have had to commit a fraud upon the defendant. This is a material alteration, and if the figures were subsequently inserted it will relieve the defendant of liability on the contract, and the plaintiff can recover nothing on a *quantum meruit*." To which instruction the plaintiff also excepted.

F. W. JONES and T. JESUP MILLER for plaintiff:

The alteration, if made, was immaterial. *Angle v. N. W. Life Ins. Co.*, 92 U. S., 330. The plaintiff had a right to fill such blank, citing *Sanderson v. Seymour*, 1 B. & B., 426, and *Berwick v. Huntress*, 53 Maine, 89, where the authorities are collated and criticised.

The testimony offered was clearly inadmissible and *res inter alios acta*, citing 1 Greenl. on Evidence, 52; *Carter v. Pryke*, Peake's Cas., 95.

R. R. PERRY and W. S. PERRY for defendant:

No authority to fill blanks where such filling will produce so different a liability from the one originally contracted for can be inferred from delivery. *Angle v. Co.*, 92 U. S.,

330, and *Lewis v. Shepherd*, 9 Wash. Law. R., 194.

The first exception goes against the admission of the testimony of Baum and the Strasburgers with whom contracts precisely similar to the one which the defendant signed were made upon the same day. Their testimony proved a similar subsequent alteration, citing *Castle v. Bullard*, 23 How., 172; *Butler v. Watkins*, 13 Wall., 456; *McAlees v. Horsey*, 35 Md., 459.

Mr. Justice Cox delivered the opinion of the court.

The plaintiff in this case sues the defendant for money payable under the following order:

"WASHINGTON, D. C., May 6, 1879.

"F. A. COTHARIN:

"You are hereby authorized to insert my advertisement in the '*Musical Gift*,' to occupy  $\frac{1}{2}$  column, 2d page, for and in consideration of which I agree to pay to you or order on presentation of this contract and certificate from printer, as to the number printed, at the rate of ten dollars (\$10), for each and every 1,000 copies of the total number printed and delivered for distribution; 500 copies to be delivered to me for free distribution; the edition not to exceed 50,000 copies. In case I do not furnish copy of advertisement for above edition within five days from above date, space may be charged for at the same rate as though copy had been furnished.

"(Signed,) E. G. DAVIS.

"Street and No. 719 Market Space."

The defense in this case is that when the contract was presented to Davis for his signature, and when he signed it, the figures "50,000" were not in the phrase "the edition not to exceed 50,000 copies" as it now reads; so that the contract it is claimed has been altered. It is somewhat singular that this alleged addition to the contract really had the effect of limiting and restricting instead of enlarging the liability that the instrument would have imposed if it was in the form which Davis says it was when he signed it. Without this alleged addition it was an agreement to pay \$10 for every thousand copies printed and delivered for distribution, without any limit at all; so that 100,000 or 200,000 copies might have been furnished, and under the terms of this agreement the party would be bound to pay for them, and his liability might have been twice or four times as much as claimed in this case. If any wrong was done the probability it seems to me is that it was in omitting these words (these large figures) for the purpose of preventing the defendant's attention from being called to the magnitude of the undertaking he was

entering upon. He was thus perhaps lulled into some security and deterred from inspecting the instrument with the care that he ought to have exercised. Whether that folly of his is a defense or not is not a question before us, because the record limits us to the question of evidence simply.

The defendant took the stand himself and testified that he would not have signed such a contract had he seen the figures 50,000, and is confident that when he signed it the space where the 50,000 now appears was blank or filled with "naughts" at the time of the said signature. So far it is all right; so far as the evidence goes. It is not positive, but it is some evidence. In corroboration of his own evidence was offered the testimony of several other persons to show that in two other contracts of a similar character executed at about the same time with other persons there were also blanks where these figures were at the time the contracts were signed, and those blanks were afterwards filled up with these figures.

In other words, to show an alteration in this contract, he offered evidence to show that the plaintiff had altered two other contracts with other parties.

It must strike anybody at once that that is a very extraordinary kind of proof as tested by the settled principles of the law of evidence. The rule as stated on that subject is expressed clearly in 1 Phillips on Evidence, p. 748, as follows:

"It is considered in general that no reasonable presumption can be formed as to the making or executing of a contract by a party with one person, in consequence of the mode in which he has made or executed similar contracts with other persons, still less can a party be affected by the declarations, conduct or dealings of strangers. Transactions which fall within either of these classes are termed in law *res inter alios acta*, and evidence of this description is uniformly rejected. In an action against the acceptor of a bill of exchange where the defense was that the acceptance was a forgery, evidence offered on the part of the defendant that a collection of bills bearing his forged signature had been in the plaintiff's possession, and that some of such bills had been circulated by him, was held to be inadmissible without distinct proof that the bill in suit had formed a part of that collection."

So here it seems to me very plain that evidence that other persons had dealings similar to this with the plaintiff, and that the plaintiff had altered contracts executed with them, after their delivery to him, is totally inadmissible to show such an alteration in this particular case. There is a well-recognized ex-

ception to that rule, and that is, where the evidence relates to the guilty or fraudulent intent or knowledge—the scienter, as it is called—of a party. Where a man is charged with passing a counterfeit bill, and the fact of passing the bill is proved, the next question is, did he know it was counterfeit? And evidence is admissible to show that it was no casual thing, but he had been in the habit of passing such bills. That is competent. But it was never held that a charge of actually passing a counterfeit bill could be proven in one case by showing that he passed counterfeit bills on other parties.

The counsel for the defense evidently felt the stress of this rule and appreciated the exception, as is manifest from the terms of the offer made in this case. In the printed record we find this interlineation: "And for the purpose of showing a general scheme to defraud the public and his intent in procuring the contract with Davis," &c. That was evidently done with this rule in view; that his transactions with other parties might be introduced to show fraudulent intent. But that is not the question here, whether this party had fraudulent intent on the public or on this defendant, but whether he did, in fact, make the alteration. It is just the reverse of the case I have supposed, where the fact is proved or admitted, and it is a question of intent. Here it is not a question of intent, but as to the fact. The question is, did he actually alter this contract after it was delivered to him; and on that question this evidence is admitted. It is not aided at all by offering evidence for the purpose of proving a matter entirely immaterial; that is, a general or particular attempt to defraud. We think that is a vital error, and could not but have an influence on the jury. They could hardly help inferring that he did the same thing in this case as in the others. The first exception, we think, therefore, is to be sustained.

The second exception is an exception of the plaintiff to the rejection of a number of prayers offered by him. But as we do not know whether the state of facts will be the same on the second trial, we do not know whether the prayers will be the same or not. One of the rulings of the court in its final instruction involves precisely the same error as is exhibited in the first exception. That is, the court gave instructions to the jury to consider this evidence of third persons about transactions with them substantially. If we are right about the first, that was an error. But for the reason I have already stated, it is not necessary that the details of that second exception should be considered by the court.

A new trial is granted in the case.

## United States Supreme Court.

No. 148.—OCTOBER TERM, 1832.

HENRY J. ROGERS, APPELLANT,

vs.

WILLIAM F. DURANT, IMPLEADED WITH  
JAMES W. DAVIS ET AL.

*Appeal from the Circuit Court of the United States for the Northern District of Illinois.*

The loss of a draft is not sufficiently proved, to support a suit in equity thereon against the drawer or acceptor, by evidence that it was left with a referee appointed by order of court to examine and report claims against an estate in the hands of a receiver, and that unsuccessful inquiries for it have been made of the referee, the receiver, and the attorney for the present defendant in those proceedings, without evidence of any search in the files of the court to which the report of the referee was returned, or any application to that court to obtain the draft.

A decree of the circuit court, dismissing upon the merits a bill of which this court on appeal holds that there is no jurisdiction in equity, will be reversed, and the cause remanded with directions to dismiss the bill without prejudice to an action at law, and with costs in the court below, and each party to pay his own costs on the appeal.

Mr. Justice GRAY delivered the opinion of the Court.

This is a bill in equity, by which Rogers seeks to recover of Durant and seven others, as copartners under the name of James W. Davis & Associates, the amount due upon several drafts, some drawn, and some accepted or promised to be accepted, by that firm, all alleged to have been held by the plaintiff and lost without his fault after maturity.

The defence of Durant is twofold: First, to the jurisdiction, because there is no sufficient proof of the loss of the drafts; second, to the merits, because he was never a member of the firm of James W. Davis & Associates. The court below, while inclining to the opinion that it had no jurisdiction, did not decide the case upon that ground, but upon the merits, and dismissed the bill generally.

The testimony introduced to show the loss of the drafts, construing it most favorably for the plaintiff, proves no more than this: In a former suit in the Supreme Court of New York to wind up the affairs of the firms of James W. Davis & Associates and of Davis, Sprague & Company, a receiver was appointed, and the claims of creditors, including the plaintiff's, were presented to a referee appointed by the court, and by him reported to the court, and a dividend ordered and paid in part thereof. The drafts in question were handed by the plaintiff to Steiger, his attor-

ney in New York, to be filed before the referee, and were so filed, and were afterwards delivered by the referee to the receiver; neither the plaintiff nor Steiger had since seen them or known where they were; and Steiger had applied for them to the receiver, to his clerk, to the referee, and to Bell, Durant's attorney in New York, and believed, without any foundation beyond his own suspicion, that they were in Bell's possession.

The original papers presented to the referee would properly be returned with his report to the files of the court which appointed him. Yet no search appears to have been made in those files, nor any application presented to that court for the delivery of the drafts to the plaintiff or his attorney. The plaintiff, having made no inquiry in the place in which the drafts would be most likely to be found, utterly fails in his attempt to prove their loss.

There being no sufficient evidence of loss, there can be no doubt that the case is one within the exclusive jurisdiction of a court of law; and it becomes unnecessary to consider the varying decisions in England and in this country upon the questions under what circumstances a court of equity has jurisdiction of a suit upon a lost bill or note; or the voluminous proofs contained in the record upon the question whether Durant was a member of the firm of James W. Davis & Associates, a question of which, for the reason already given, we have no jurisdiction in this case, and which, being a pure question of fact, can never be brought to this court in any future action at law.

The decree of the circuit court, dismissing the bill generally, might be considered a bar to an action at law, and should therefore be reversed and the cause remanded with directions to enter a decree dismissing the bill for want of jurisdiction, without prejudice to the right of the plaintiff to sue at law. *Horsburg v. Baker*, 1 Pet., 232; *Barney v. Baltimore*, 6 Wall., 280; *Kendig v. Dean*, 97 U. S., 423. In accordance with the spirit of the twenty-fourth general rule of this court, and under the discretionary power therein reserved, costs should not be allowed to the plaintiff, because so far as concerns the present suit, the decree is wholly against the relief that he seeks; but the dismissal is to be with costs in the court below, and each party is to pay his own costs on this appeal. Decree accordingly.

You must often turn your style, if you mean to write anything worthy of being read a second time; nor should you labor to be admired by the multitude, but be content with few readers.—HORACE.

#### Trade-Mark.

CLEMENT vs. BELFORD.

*United States Circuit Court, N. D. Illinois. 1883.*

*Copyright—Nom de Plume as Trade-Mark—Right to republish.* Literary productions, published under a *nom de plume* and not secured by copyright, become public property, and the use of the assumed name is not a trade-mark, which will protect the literary property against republication.

The bill in this case states that complainant has, for about twenty years last past, been an author and writer by profession; that he has been in the habit for said time of publishing articles, sketches, books, and other literary matter, composed by him for publication under the name, assumed by him to designate himself as the author and writer of sketches, articles, books, and other literary manner, of "Mark Twain;" that the said designation of "Mark Twain" has been used by him during the last twenty years as his *nom de plume* or trade-mark as an author; that his said writings, under the designation of "Mark Twain," have acquired great popularity and met with a ready and continuous sale, and that no other person has been licensed, or permitted by him to use said designation of "Mark Twain," as a *nom de plume* or designation of authorship; that the exclusive right of selecting for publication and of publishing in any collective form the sketches, articles, or other writings, written and originally published by him under the said name of "Mark Twain," so as to make a book or collection of durable form for publication, by right ought to belong exclusively to him, and is of great value to him in his reputation, and a great security to the public as purchasers of the works purporting to have been written by complainant; that the said defendants have made, printed, put out and sold, in great quantities, a certain book called upon its title-page, "Sketches by Mark Twain. Now first published in complete form. Belford & Co. 1880." Many or most of which, in one form or another, are substantially like sketches published prior to the year 1880 by complainant; and the said Belford, Clark & Co. had no authority, leave, or license from complainant, or derived from him, to make publication of the said book, or any part thereof. That the defendants in their said book, so published by them, placed upon the page next succeeding the leaf whereon the title-page is printed, a preface in these words: "I have scattered through this volume a mass of matter which has never been in print before (such as 'Learned Fables for Good Old Boys and Gils,' the 'Jumping Frog Restored to the English Tongue after Martyr-

dom in the French,' the 'Membraneous Croup' sketch, and many others which I need not specify); not doing this in order to make an advertisement of it, but because these things seemed instructive. Mark Twain." That complainant never gave any authority, leave, or license to the defendants to print or publish any such preface or any of the representations therein contained, or substantially the same; that complainant has by the said wrongful acts of the defendants been greatly injured, and his property in said *nom de plume*, or trade-mark, of "Mark Twain" as a commercial designation of authorship has been deteriorated and lessened in value; wherefore he prays damages, and profits, and a writ of injunction restraining further publication of said work, and that the plates of such book may be damasked and destroyed. To this bill defendants have filed a special and general demurrer.

BLODGETT, J., in delivering the opinion of the court, said: The position assumed by the complainant in this bill is, that he has the exclusive right to the use of the *nom de plume*, or trade-mark, of "Mark Twain," assumed by him, and that defendants can be enjoined by a court of equity from using such name without the complainant's consent or license.

It does not seem to me that an author or writer has or can acquire any better or higher right in a *nom de plume*, or assumed name, than he has in his Christian or baptismal name. When a person enters the field of authorship, he can secure to himself the exclusive right to his writings by a copyright under the laws of the United States. If he publishes anything of which he is the author or compiler, either under his own proper name or an assumed name, without protecting it by copyright, it becomes public property, and any person, who chooses to do so, has the right to republish it, and to state the name of the author in such form in the book, either upon the title-page or otherwise, as to show who was the writer or author thereof. "In this country an author has no exclusive property in his published work except when he has secured and protected it by compliance with the copyright laws of the United States," *Wheaton v. Peters*, 8 Pet., 591; *Clayton v. Stowe*, 2 Paine, 382; *Bartlett v. Crittenden*, 5 McLean, 32; *Pulte v. Derby*, 5 Ib., 328. "If an author would secure to himself the sole right of printing, publishing and selling his literary compositions he must do so under the copyright laws." *Stowe v. Thomas*, 2 Wall., Jr., 547. The seventh paragraph of the bill charges that many or most of the sketches contained in the book complained of

"in one form or another are substantially like sketches published prior to the year 1880 by your orator;" but it does not aver that they are, or ever were, protected by copyright, and by implication concedes their publication without copyright. If they were published without such protection they become public property, and may be republished by any one who chooses to do so.

The bill rests, then, upon the single proposition, is the complainant entitled to invoke the aid of this court to prevent the defendants from using the complainant's assumed name of "Mark Twain" in connection with the publication of sketches and writings which complainant has heretofore published under that name, and which have not been copyrighted by him? That he could not have done this if these sketches had been published under complainant's proper name is clear from the authorities I have cited, but the complainant seems to assume that he has acquired a right to the protection of his writings under his assumed name as a trade name or trade-mark. This is the first attempt which has ever come under my notice to protect a writer's exclusive right to literary property under the law applicable to trade-marks. Literary property is the right which the author or publisher of a literary work has to prevent its multiplication by copies or duplication, and is from its very nature an incorporeal right. William Cobbett could have no greater right to protect a literary production which he gave to the world under the fictitious name of "Peter Porcupine" than that which was published under his own proper name. The invention of a *nom de plume* gives the writer no increase of right over another who uses his own name. Trade-marks are the means by which the manufacturers of vendible merchandise designate or state to the public the quality of such goods and the fact that they are the manufacturers of them. And one person may have several trade-marks designating different kinds of goods or different qualities of the same kind; but an author cannot by the adoption of a *nom de plume* be allowed to defeat the well-settled rules of the common law in force in this country, that the "publication of a literary work without copyright is a dedication to the public, after which any one may republish it." No pseudonym, however ingenious, novel or quaint, can give an author any more rights than he would have under his own name. The policy of the law in this country has been settled too long to be now considered doubtful; that the publication of literary matter without protection by copyright has dedicated such matter to the public, and the public are en-

titled to use it in such form as they may thereafter choose, and to quote, compile or publish it as the writing of its author. That is, any person who chooses to do so can republish any uncopyrighted literary production, and give the name of the author either upon the title-page or otherwise, as best suits the interest or taste of the person so republishing. Demurrer sustained.

#### **Sale of Patented Machines by Sheriff.**

Wilder, the owner of a couple of county rights for a patent graining machine, became bankrupt, and his wooden ware factory, its machinery and effects, were sold at auction by the sheriff, including two of the graining machines which were in use in the establishment. Davis, the purchaser, having put the patented machines into use, Wilder brought suit for infringement, claiming that although the sheriff had authority to levy on and sell the machines, such sale did not carry with it the right to use the machines, as that right pertained to the patent, and could not be sold by the sheriff.

The case was tried in the United States Court, Western District of Pennsylvania, before Judges McKennan and Acheson, who held as follows:

"The purchaser of a machine from the patentee acquires no right in the patent itself, and needs none to enable him to enjoy his acquisition. By implication he is invested with a license to use that particular machine, and in the absence of express provision to the contrary such license passes with the machine to successive owners as an incident of proprietorship. That such is the law in case of a voluntary sale of a patented machine by the patentee is incontrovertible. But wherefore should the rights of the sheriff's vendee under an execution against the patentee be less than those of a purchaser directly from the patentee? The rule is that the purchaser at a sheriff's sale succeeds to the beneficial rights of the defendant in the execution to the property sold. *Chambers v. Smith*. But why should an exception be made where the subject-matter of sale is a patented machine? To deny to the sheriff's vendee the right to use such machine would in effect prevent its sale upon an execution at law as an operative apparatus, and practically withdraw it from the reach of the owner's execution creditors. The mischievous consequences to such creditors to which the doctrine contended for would lead (now that patented machinery has come into almost universal use) can hardly be estimated. The plaintiff's position is untenable. It is very true that the patent right

itself, being incorporeal and vesting exclusively upon statutory grant, cannot be levied on at law, and is available to creditors only by proceeding, in a court of equity. (*Ager v. Murray*, 105 U. S., 126.) But a patented machine is susceptible of manual seizure, and the unrestricted sale thereof does not involve the transfer of any interest in the patent.

"The conclusion, therefore, is that whatever right to use the patented machine a defendant in an execution may have passes with the machine when sold by the sheriff to his vendee. Hence it follows that the plaintiff has no just cause of complaint against these defendants." Bill dismissed.—*Scientific American*.

#### **The Magna Charta.**

This great charter—the "Charter of Liberties of the English People," as it was called—was in fact a careful revision and reproduction of the old Anglo-Saxon principles and tenets of governments which had been suppressed by the Norman conquerors and their immediate successors. But never mind that. Suffice it to say it was a grant forever, from the king to the people, of the rights of liberty and life. After it had become known that the king (John) would at length sign it, the charter was drawn up on parchment with great care, the most expert scribes having been engaged to perform the engrossing, and when it had been completed it was taken to the royal presence, where the signing was done. One of the largest sheets or skins of vellum to be procured had been put to the use, and there was room on the margin for the signatures of the king and all the great barons, besides the affixing of their seals. A grand celebration, followed the consummation of the work, after which knowledge of the great charter and its provisions was given to the people at large, to which end a copy was made, duly attested, for each and every county in the kingdom. And mind you, this document was voluminous. Nothing which those old liberty demanding barons could think of had been forgotten. There were more than fifty separate sections, and many of those sections contained each a volume in itself.

Well, copies were made from the original, and then copies were made from copies; and not only were copies of the charter sent to proper officers throughout the realm, but many of the barons had copies for themselves. The original draft—the grand document of all, the one parent of all copies—was laid away so carefully that no one could find it. However, that generation did not care so much about it. The attested copies were

good enough. But succeeding generations were anxious to see the original *Magna Charta*, the document whereunto was affixed the signature and seal of John Lackland, and on which, too, the stout old barons had put their hands, either to write their names or to make their marks. But it was not to be found. The eager ones searched high and low, far and near, but without avail. It was believed at length that the great original had been unfortunately destroyed. And so the matter rested for a long, long time, as we shall see.

The great charter was made in the beginning of the thirteenth century. Early in the seventeenth century—400 years later—Sir Robert Cotton, the celebrated antiquary, chanced one day to have his attention attracted to a curious looking piece of parchment, its margin thickly armed with broad seals, which a tailor had laid out upon his board, just ready to cut it up into measures. He sprang forward and held the workman's hand; when lo and behold! there lay the true magna charta!—the great original, with its signatures and its seals all intact. The tailor said he had obtained it with a lot of old papers that he had purchased of a man who had recently rented a suite of apartments which had, in olden times, been occupied by a firm of scriveners. Sir Robert bought the precious document for a trifling sum.

Lord Chief Justice Coleridge.

*Letter accepting the invitation of the Bar Association of the State of New York, to be present at their next annual meeting.*

GENTLEMEN: Your letter of the 31st of January, has just reached me. Allow me to offer to you, and through you to the bar of New York, my grateful thanks for the invitation which it contains. I acknowledge in that invitation a striking mark of the kindly feeling entertained by the lawyers of a great American State towards the lawyers of England, engaged as we are in the common practice of a common profession, and bound by a law in many respects the same.

It is matter of regret to me that the distinction you confer and the kindness you offer should be conferred and offered in regard of one who unaffectedly feels his entire unfitness to represent the great traditions of a body, of which he chances to be the highest non-political member, but as I cannot look upon the compliment as personal, so neither ought personal considerations to influence me in accepting or declining it. I do not feel free to refuse an invitation so cordial and generous as yours, and I accordingly accept it and thank you for it.

Two things only further it is fit that I should say: my public duties make it impossible for me to leave England before the 10th or 12th of August, a time which I fear may be inconvenient to you, but as to which the duties of my office leave me no choice. Lastly I am obliged to add, that since an illness with which I was visited in November, I have not regained my health and strength; and it is, therefore, possible, though I hope not likely, that I may be unable from want of strength to undertake the visit. Should I be unhappily prevented from coming from this cause (no other will prevent me), I need not say I will give you the timeliest notice in my power.

I am, gentlemen, with great respect, your obliged and obedient humble servant,

COLERIDGE.

1 Sussex Square, London, W., Feb. 10, 1883.

In a suit for the infringement of a copyright it appeared that the defendant's bottle was of the same size, color, shape and material as that of the plaintiffs. The words on the alleged infringing label were "Clayton & Russell's Celebrated Stomach Bitters." The plaintiffs' label had "Hostetter's Celebrated Stomach Bitters." In this case, *Hostetter v. Adams*, in the United States Circuit Court, at New York, on February 18, Judge Blatchford, in making a decree for the plaintiff, said; "It is shown that there are no such persons as Clayton & Russell, and that the defendants' label was prepared from the plaintiffs' by intentionally making the parts in it which are like corresponding parts in the plaintiffs' to be so like it. It is plain that it is a copy from the plaintiffs' by design. Variations are made of such a character as to be capable of discernment and description. But the general effect, to an ordinary person acquainted with the plaintiffs' bottle and label, never having seen the defendants' label, and not expecting to see it, must be, on seeing the defendants', misled into thinking it is what he has known as the plaintiffs'. The plaintiffs have no exclusive right to make the bitters. Their trademark is not in the words "celebrated stomach bitters," nor have they any exclusive right to a bottle of the size, shape and color of one which they use. But the entire style of their bottle and label, of which those words form a part, is, in connection with the other particulars in which the defendants' bottle and label are like theirs, the mark of their trade. The evidence as to transactions after the filing of the bill is admissible. It comes in, not to show infringement, but to characterize the practical use of the subject-matter of the suit."—*American Law Magazine*.

## Land Department.

Furnished by SICKELS & RANDALL.

*Attorneys in Land and Mining Cases,*  
WASHINGTON, D. C.

### MAMMOTH QUARTZ MINE vs. ROYDOR.

Patent issued for placer claim in January, 1876. Robinson applied for patent for his lode claim within the limits of the placer claim, August 30, 1880, alleging that said lode was known to exist at date of application for placer patent.

*Held*, That Robinson's application should have been received, and thereafter adverse claim might be filed and the question in controversy settled in the courts.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, March 19, 1883.

*The Commissioner of the General Land Office:*

SIR: I have considered the case of William T. Robinson, claimant of the Mammoth Quartz Mine v. Joseph D. Roydor, patentee of the W.  $\frac{1}{2}$  of the N.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of the S.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  of sec. 5, tp. 5, R. 12 E., placer location, Sacramento, California.

Your office having denied Robinson's right to appeal, the record in the case is brought to this Department by certiorari allowed upon the petition made in behalf of the owner of Mammoth Quartz Mine.

Roydor made application for a patent on his placer claim October 28, 1874, and patent was issued to him therefor January 14, 1876.

The record shows that on the 30th day of August, 1880, Robinson made application for patent for said Mammoth Lode. The register and receiver refused to entertain the application, because it conflicted with the patented Roydor placer aforesaid.

September 30, 1880, Robinson made affidavit that Roydor knew at the time when he applied for his patent of the existence of the quartz vein located by affiant, and with his affidavit filed two affidavits of third parties in support of the allegation.

December 6, same year, your office ordered a hearing to determine "whether a vein was known to exist at the date of the issuance of said placer patent." Hearing was accordingly had. The register and receiver found from the testimony that at the time of the issuance of the patent to Roydor, January 14, 1876, there was no known ledge or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits." And upon appeal to your office you reviewed the testimony and affirmed the finding of the local officers.

Although your office directed the inquiry to be made as to whether the lode was known to

exist at the date of the issuance of the placer patent, Robinson's affidavit averred that Roydor knew of its existence at the time that he made application for his said patent.

The averments in the affidavit, therefore, brought the case within the rule established by this Department in the late case of Becker v. Sears, and War Dance Lode v. Church Placer (9 C. L. O., 211 and 212), in which it was held that the lode must be known to exist at the "date of the application."

I am of the opinion that the register and receiver should not have rejected Robinson's application because of its conflict with the patented Roydor placer. I therefore direct that all proceedings subsequent to said Robinson's application for a patent for the Mammoth lode be dismissed without prejudice, and that Robinson be permitted to proceed in compliance with the statute.

The adverse claim can then be made and the controversy settled by the court in the manner directed by the statute.

The papers submitted with your letter of April 18, 1882, are herewith returned.

Very respectfully,  
H. M. TELLER,  
Secretary.

### MONTAGUE PLACER.

A party who applies for a lode claim within the limits of a previously entered placer, alleging that the same was known to exist at date of the application for placer patent, may proceed with his application, and it is a question for the jury, upon a suit brought upon an adverse claim, to decide the issue.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, March 22, 1883.

*The Commissioner of the General Land Office:*

SIR: I enclose herewith an application by Page and Hauke, attorneys, in behalf of Thos. Ambrose, dated the 17th instant, praying for an order, under Rules 83 and 84 of Practice, to certify the record in the case of Central City, Colorado, placer claim of Harrison Montague, mineral entry No. 1378; also a request by Sickels & Randall, on behalf of Montague, that the order be denied.

The application is deficient in the matter of statement, under the rule laid down in the case of Wright v. St. Bernard Mining Co., Feb'y 14, 1882 (Law Reporter, vol. 10, p. 172), there being no specific recital of your decisions upon the subject-matter, nor any copy of the decisions.

But, upon the broadest assumption set up by the petition, there is nothing which can result in material injury to Ambrose; inasmuch as,



under the rule laid down by me in the case of *Mammoth Quartz Mine v. Roydor*, 19th instant, if he has a lode claim within the placer, he may, upon allegation that the lode was known at date of Montague's application, be permitted to proceed with an application for patent in his own behalf, and the whole case may go to a jury through a suit which the adverse party would be required to bring in the courts. I, therefore, decline to interpose an order for certification.

Very respectfully,  
H. M. TELLER,  
Secretary.

## The Courts.

### U. S. Supreme Court Proceedings.

MARCH 19, 1883.

The following gentlemen were admitted to practice during the past week:

William M. Williams, of Booneville, Mo.; John Arthur, of Washington, D. C.; Thomas McDougall, of Cincinnati, Ohio; George A. Mercer, of Savannah, Ga.; Theodore F. Miller, of New York City.

No. 711. E. A. Merritt, collector, &c., v. Joseph Park, Jr., et al. To C. C. U. S., S. D. of N. Y. Judgment reversed and cause remanded for a new trial. Opinion by Mr. Justice Blatchford.

No. 525. Same v. Alphonse Stephani. To C. C. U. S., S. D. of N. Y. Same. Same.

No. 1126. Thomas Cochran et al. v. Augustus Schell et al.

No. 1127. Augustus Schell et al. v. Thomas Cochran et al. Cross action. To C. C. U. S., S. D. of N. Y. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 177. George W. Hill v. George F. Harding et al. To S. C. of Ill. Judgment reversed and cause remanded. Opinion by Mr. Justice Gray.

No. 176. E. S. Jaffray & Co. et al. v. McGhee, Snowden & Violett et al. From C. C. U. S., E. D. of Ark. Decree affirmed. Opinion by Mr. Justice Woods.

No. 169. Charles H. Marshall et al. v. The Steamship Adriatic, &c. From C. C. U. S., S. D. of N. Y. Decree affirmed. Opinion by Mr. Justice Field.

No. 694. The City of Ottawa v. William H. Cary. To C. C. U. S., N. D. of Ill. Judgment reversed and cause remanded. Opinion by Mr. Chief-Justice Waite.

No. 713. C. A. Arthur, late collector, &c., v. David & Rose Fox. To C. C. U. S., S. D. of N. Y. Judgment reversed and cause remanded for a new trial. Opinion by Mr. Chief-Justice Waite.

No. 924. Charles Winchester v. Henry M. Loud. From C. C. U. S., E. D. of Mich. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1201. Madelaine Roth v. Frederica Ehman et al. To S. C. Ill. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 324. J. B. Woodyard et al. v. R. M. Cary. To C. C. U. S., E. D. of Texas. Dismissed.

No. 10. Original. In re E. E. Norton, and

No. 11. Original. In re Hung Hang. Leave granted to file petition for writ of mandamus.

MARCH 20, 1883.

No. 190. Wm. and Charles Ludloff v. The United States. Argued and submitted.

Nos. 191 and 192. Mills County, Iowa, v. The Burlington and Mo. River R. R. Co. et al. Same.

No. 197. Jonathan Kirkbride v. Lafayette County. Same.

MARCH 21, 1883.

No. 735. Amos Birdsall, &c., v. The Standard Sugar Refinery. From C. C. U. S., D. of Mass. Dismissed.

Nos. 282 and 284. J. C. Flood et al. v. John H. Burke; and

No. 283 and 285. J. W. Mackay et al. v. John H. Burke. From C. C. U. S., D. of California. Same.

No. 805. John F. Hartranft, collector, &c., v. L. P. Kennedy. To C. C. U. S., E. D. of Penn. Same.

MARCH 22, 1883.

No. 467. Gertrude W. Kensett v. Moses D. Stivers, collector, &c. From C. C. U. S., S. D. of N. Y. Dismissed.

No. 209. Magdalene Von Cotzhausen v. John Nazro, collector, &c. C. C. U. S., E. D. Wis. Argued and submitted.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

MARCH 19, 1883.

Wm. B. Barton, of Va., was admitted to practice.

E. E. Jackson & Co. v. Mary G. Schulze. Judgment of special term reversed and remanded for a new trial.

John H. Flagg v. Geo. E. Kirk. Judgment of special term affirmed.

Lewis D. Means et al. v. Wm. S. Hoge et al. Argued and submitted.

U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen, Secretary, &c. Demurrer to defendant's answer.

### EQUITY COURT.—Justice James.

MARCH 18, 1883.

Fleetwood v. Hawksworth. Decree substituting trustee passed.

Young v. Gale. Delivery of possession ordered.

Shugrue v. Fogarty. Rule returnable April 13, 1883, ordered.

Denmead v. Denmead. Auditor's report confirmed.

Robinson v. Johnson. Testimony ordered taken.

MARCH 14, 1883.

Brown v. Brown. Guardian ad litem appointed.

May v. May. Offer to trustee ordered accepted.

Byrns v. Birny. Restraining order granted.

Ridlon v. Norton. Guardian ad litem appointed.

Fitzgerald v. Fitzgerald. Appearance of absent defendant ordered.

Dodge v. Davis. Sale ordered by trustee.

MARCH 15, 1883.

Mulvahill v. Mulvahill. Testimony ordered taken.

Myers v. Myers. Auditor's report confirmed.

### CRIMINAL COURT.—Justice Wylie.

MARCH 12, 1883.

U. S. v. John W. Dorsey et al.

Martin F. Maginnes, of Montana, testified o

behalf of the defendants. The court held that no evidence was admissible concerning what took place after the order charged in the indictment as fraudulent.

MARCH 13, 1883.

Ray P. Eaton, of Bath, Maine, and Walter Sprague were examined on the part of the defense.

MARCH 14, 1883.

Thomas J. Brady, one of the defendants, testified. Wm. H. Turner testified for the defense and was cross-examined by the prosecution.

MARCH 15, 1883.

Thomas J. Brady occupied the witness stand during the session of the court.

MARCH 19, 1883.

Brady was examined on the part of the defense.

MARCH 20, 1883.

The court ruled that a witness could waive his privileges, but it was the duty of the court to see that no irrelevant testimony was admitted. Brady was cross-examined by the prosecution.

MARCH 21, 1883.

Where a question, the answer of which tended to show the relation between two parties, and the credibility or the memory of the witness, the court held that it could be asked on cross-examination. W. T. Sherman was called and testified for the defense.

MARCH 22, 1883.

Theodore A. Torrey was examined by the defense and cross-examined by the prosecution. Robert F. Mullins, Chase Andrews, and William F. Kellogg testified, the latter was cross-examined by the government.

#### CRIMINAL COURT NO. 2.—Justice Hagner.

MARCH 15, 1883.

U. S. v. Carrie Ackers alias Carrie Mudd. Appeal from Police Court dismissed and sentence ordered to be carried into effect.

U. S. v. Bell Berryman. Assault with intent to kill. Pleaded guilty and sentenced to penitentiary for 3 years.

U. S. v. Carrie Ager, alias Carrie Ackers, alias Carrie Rud. Grand larceny. Verdict not guilty as indicted of grand larceny.

U. S. v. Ellen Duval. Grand larceny. Bench warrant issued for the arrest of defendant.

U. S. v. David L. Count. Information for larceny. Verdict not guilty.

U. S. v. Margaret Ford alias Maggie Ford. Second offense petit larceny. Verdict guilty. Sentence one year.

U. S. v. James Carroll. Second offense petit larceny. Verdict guilty.

MARCH 16, 1883.

U. S. v. John W. Brawner. Indicted for house breaking by night. Verdict guilty. Sentence 5 years.

U. S. v. Elias Brown alias Kletter Brown. Indicted for assault with intent to kill. Verdict not guilty.

U. S. v. Simon A. Burkley. Indicted for house breaking in night. Nol pros.

MARCH 20, 1883.

U. S. v. Geo. Marlow. Indicted for house breaking in night. Verdict guilty. Sentence 5 years.

U. S. v. Lucy Addison. Information for larceny. Verdict guilty. Sentence 90 days.

U. S. v. James Crusor. Information for larceny. Verdict guilty. Sentence 15 days.

## The Courts.

### IN EQUITY.—New Suits.

MARCH 16, 1883.

8492. W. W. Hubbell v. Mary A. Hubbell. For divorce. Com. sol., P. P.

MARCH 17, 1883.

8493. Richard Lewis v. Mary E. Lewis, For divorce. Com. sol., C. Carrington.

8494. John B. Alley v. Isaac S. Lyon. Injunction. Com. sol., H. H. Wells.

MARCH 20, 1883.

8495. Richard Mitchell et al. v. Chloe A. Mitchell. To declare trust. Com. sols., Carrington and Williamson.

8496. Mary O. Bennett v. Charles W. Egan et al. To substitute trustee. Com. sols., Hagner & Maddox.

8497. Same v. Linnie A. Ellis et al. To substitute trustee. Com. sols., same.

MARCH 21, 1883.

8498. Augustus S. Worthington et al. v. Milton O. Randall. To construe will. Com. sols., Worthington & Heald.

MARCH 22, 1883.

8499. Hannah O. Foulke v. Charles W. Foulke. For divorce. Com. sol., A. K. Browne.

### CIRCUIT COURT.—New Suits at Law.

24332. Edward T. Buckley v. Maria McCarthy. Judgment of Justice Walter, \$36.49. Pliffs. atty. L. O. Williamson.

MARCH 16, 1883.

24333. Wright Curtiss v. Samuel Ocas et al. Note, \$100. Pliffs atty, H. B. Moulton.

24334. Same v. Jacob Lefo et al. Note, \$125. Pliffs atty, same.

24335. Sarah C. Humphrey v. George B. Whiting. Covenant, \$160. Pliffs atty, A. A. Lipcomb.

24336. William H. Lea v. The District of Columbia. Damages, \$5,000. Pliffs atty, H. E. Davis.

24337. R. Ross Perry et al. v. John G. Olberg. Judgment of Justice Walter, \$63. Pliffs atty, E. E. Perry.

24343. Joseph P. Quin v. Same. Foreign judgment, \$9,206.64. Pliffs atty, same.

24349. John L. Peukertomes v. Same. Foreign judgment, \$4,336.61. Pliffs atty, same.

MARCH 17, 1883.

24338. George I. Hill v. John Raney. Note, \$100. Pliffs atty, J. H. Smith.

24339. George H. Lybrand v. Joseph D. Free, jr. Damages, \$2,000. Pliffs atty, E. A. Newman.

MARCH 19, 1883.

24340. George D. Stringfield et al. v. Nani Gutman. Bill of ex, \$1,585.15. Pliffs atty, H. W. Garrett.

24341. Scott Warren v. The B. & O. R. Co. Damages, \$10,000. Pliffs atty, Cook & Cole.

24342. Thomas H. Moran v. John Fitzmorris. Account, \$100.05. Pliffs atty, H. H. Wells, jr.

MARCH 20, 1883.

24343. John T. Richards v. George Wilson. Foreign judgment, \$4,530.14. Pliffs attys, Ross & Dean.

24344. John J. McMahon v. Lewis Mackall. Account, \$236.25. Pliffs attys, Douglass & Son.

24345. John Bell v. H. H. Alexander. Note, \$191.20. Pliffs atty, H. H. Wells, jr.

24346. The U. S. of America v. John T. Mitchell et al. Bond, \$10,000. Pliffs atty, Geo. B. Corkhill.

MARCH 21, 1883.

Albert G. Boget et al. v. Ben. Holladay. Foreign judgment, \$4,162.58. Pliffs atty, Merrick & Morris.

MARCH 10, 1883.

### PROBATE COURT.—Justice James.

MARCH 9, 1883.

Ambrose H. Norton, guardian to Lucretia Norton bonded. In re Annie G. Hume, guardian. Petition and order to live in real estate.

Estate of John Keefe. Will admitted to probate and eters of administration, o. t. a., to widow granted.

Estate of Cecilia Cain; renunciation of trustee under the will filed.

Estate of Louisa Joachim; renunciation of executor filed, will proved by two witnesses.

Estate of Mary Ann Fullmore; petition of legatee, appointment of executor who bonded and qualified.

Peter P. Little, guardian to Benson Shiner; petition and order of his appointment bonded.

Estate of Hugh Kandler; order reducing penalty of bond.

Estate of Mathias L. Allig; petition of executor to pay amount due, annuitant under the will.

Estate of Frederick A. Fill; inventory returned by administrator w. a.  
In re Mary Teresa Freeman, guardian; citation against guardian.

Estate of Eliza Bold; proof of publication filed, will proved and administrator w. a. appointed and bonded.  
John H. Brooks, guardian to Ann Thompson; petition and order of appointment bonded.

Estate of William Whiting; administrator bonded and qualified.

Estate of Daniel A. Connolly; petition and consent of heirs appointing administrator bonded and qualified.

Will of Stephen J. Dallas; petition for probate and letters.  
Estate of Henry Helmsen; administrator bonded and qualified.

MARCH 12, 1883.

Estate of Emeline Carter; administrator bonded and qualified.

MARCH 13, 1883.

Estate of James Bateman; petition for administration and.

Will of Eliab Kingman, with codicils, filed.  
Estate of Rosa Clark Farquhar; petition of executor filed.

Will of Catharine Brown; filed for probate.  
Copy of will of Nehemiah Stone; from Prince George's Co., Md., filed.

MARCH 14, 1883.

In re estate of Cecelia Cain; will admitted to probate.  
In re estate of John Keefe; citation and order of publication.

Estate of Chas. W. Curtice; inventory returned by administrator.

Estate of Margaret Berry; petition of executor, &c.  
In re Annie Burrus, guardian of Edward Burrus; petition and appointment of guardian.

Will of John Markriter; filed for probate.  
Estate of William Vigle; petition for administration filed.

MARCH 16, 1883.

In re will of Maria Benter; caveat filed and petition of Louisa Lenoir, to appoint a collector, petition of David W. Brner, to appoint a collector.

Estate of Noble Johnson; will fully proved.  
In re estate of James Felix; petition for administration and.

Estate of Peter McGrath; proof of publication filed and letters granted.

Will of Edward C. Anderson; filed and proved and letters granted.

Estate of Loyal Cowles; petition for administration.  
Estate of James F. Meguire; petition of administrator for order of sale.

Mary T. Freeman, guardian; citation returned served.  
Will of Caroline A. Dolbear, filed; commission to prove will and publication ordered.

Estate of Sterling T. Austin; renunciation of administration favor of another, who was appointed and bonded.  
Will of John Markriter; fully proved and letters granted and bonded.

Will of Catharine Brown; citation against next of kin, petition to probate and for letters.

Will of Franz Waldecker; petition of widow for letters granted and bonded.

Estate of Moses Ogile; petition of creditor and renunciation of widow, &c., order of publication.

Estate of Louisa Yeabower; petition for the appointment of administrator, order of publication.

In re estate of James M. Carlisle, jr.; petition of administrator and order authorizing him to satisfy bond due estate.

Estate of Lambert Tree; final account of executor passed.

Estate of Margaret Berry; final account of executor passed.

Geo. Callaghan, guardian; third account passed.  
J. Albert Weegle, guardian; first account passed.

Estate of Harriet Park Phisk; final account of administrator passed.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of March, 1883.

MAY E. FITZ GERALD

ALEXANDER FITZ GERALD. } No. 8490. Fq. Doc. 22.

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Alexander Fitz Gerald, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 12-3 E. J. Mages, Clerk, &c.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.

In the case of Frederick Spindler, Administrator of Anna Mary Haberman, alias Mary Haberman, alias Maria Haberman, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
CONWAY ROBINSON, JR., Solicitor. 12-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.

In the case of Thomas J. Myers, Executor of Fanny M. Sutherland, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 30th day of April A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 12-3 H. J. RAMSDELL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.

In the matter of the Estate of Loyal Cowles, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Israel L. Townsend.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
CRITTENDEN & MACKAY, Solicitors. 12-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

THOMAS LUCAS

v. } No. 8473. In Equity.

JOHN JOHNSON ET AL.  
On motion of the plaintiffs by Mr. B. F. Leighton their solicitor, it is, this 21st day of March, A. D. 1883, ordered that the defendants, John Johnson, Martha R. Johnson alias Martha R. Sewell, and the unknown heirs of John Sewell and John G. Sewell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 12-3 E. J. Mages, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH A. MOORE ET AL.

v. } Equity 8,192. Docket 18.

MARY E. HARRISON ET AL.  
Upon consideration, and upon it appearing to the court that James G. Payne and Edward H. Thomas, trustees, have sold lot 6 of the subdivision of part of square 468, made and recorded by the heirs of William Whitcroft, deceased, to Henry Kraak, at and for the sum of \$13,000. Under the terms of the decrees of this court it is this 21st day of March, A. D. 1883, ordered, that the said sale be finally ratified and confirmed on the 21st day of April next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter.

By the Court. WALTER S. COX, Justice.  
True copy. Test: 12-3 E. J. Mages, Clerk.

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sterling T. Austin, late of Lake Providence, Louisiana, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1883.

FLORENCE A. AUSTIN, Administratrix.  
SHELLBARGER & WILSON, Solicitors. 13-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Franz Waldecker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

JOSEPHINE WALDECKER, Executrix. 13-3

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter McGrath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

DANIEL HANNAN, Executor. 13-3  
JNO F. ENNIS, Solicitor.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Markriter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

FREDERICK M. DETWEILER, Executor. 13-3  
HENRY WISE GARNATT, Solicitor.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Daniel A. Connolly, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1883.

COLUMBUS J. ESLIN, Adm'r. 13-3  
A. A. LIFSCOMB, Solicitor.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.

In the case of Thomas J. Myers, Executor of Francis E. Boyle, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 20th day of April A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: [13-3] H. J. RAMSDELL, Register of Wills.

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.

In the matter of the Will of Stephen J. Dallas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eda A. Dallas.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

(1. MAURICE SMITH, Solicitor. 11-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.

In the case of William K. Duhamel, Administrator of John P. Sherburne, late of San Francisco, Cal., deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 10-3 H. J. RAMSDELL, Register of Wills.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Thursday the 8th day of March, 1883.

MARY E. STROUD, Plaintiff, } No. 8480. Eq. Doc. 22.  
v. }  
HARRY R. STROUD, Defendant.

On motion of the plaintiff, by Mr. Jno. P. Anderson, her attorney, it is ordered that the defendant, Harry R. Stroud, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. OHAS. P. JAMES, Justice.

True copy. Test: 10-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, March 6, 1883.

JOSEPH SYKES } No. 8475. Equity.  
v. }  
MARY ANN SYKES.

On motion of the petitioner, by O. S. Bundy, his solicitor it is ordered that the defendant, Mary Ann Sykes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 10-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

CHASE } No. 8144. In Equity.  
v. }  
CHASE ET AL.

W. K. Duhamel, the trustee, having reported a sale of parts of lots 9 and 10, in square 428, being the south part of lot 9, fronting twenty (20) feet on Seventh street, and running the same width, the depth of the lot sixty-six (66) feet and eight (8) inches; and the northern two-and-a-half (2½) inches of lot 10, commencing at the southeast corner of lot 9, and running south two-and-a-half (2½) inches, thence west with a line parallel to the south line of lot 9, being a strip of ground two-and-a-half (2½) inches, fronting on Seventh street and of the same depth as lot 9, to Richard O. Lewis, for \$4,010.

And also, a sale of part of lot 6, in square 341, beginning at a point on the line of Eleventh street, west, 124 feet 7 inches from the northwest angle of the square and running due south twenty-five (25) feet, due east one hundred (100) feet, thence due north twenty-five (25) feet, thence due west one hundred (100) feet to the place of beginning, to William F. Free, for \$2,810 cash. It is, this eighth day of March, 1883, by the court, ordered that the said several sales be and the same are hereby ratified and confirmed unless cause contrary be shown on or before the ninth day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

By the Court. OHAS. P. JAMES, Justice.

A true copy. 10-3 Test: R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Henderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of February, 1883.

HELEN B. HENDERSON,  
MARY E. HENDERSON.

WM. G. HENDERSON, Solicitor.

8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES T. WARD ET AL. } No. 8,304. Equity.

EDITH WARD ET AL.

James S. Edwards, the trustee herein, having reported a sale of a part of the lots 2 and 3, in the square 294, containing 1,300 square feet of ground, to William B. and Robert Downing, assignees of Daniel J. Macarty, for the sum of \$1,188, also of a part of the said lot 3, in said square, containing 2,028.88 square feet of ground to the said Daniel J. Macarty, for the sum of \$1,842.81, and which said several parts of said lots, are more particularly described in the report of said trustee and the proceedings in this cause:

It is, this 20th day of February, A. D. 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 21st day of March, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 8-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 3, 1883.**

In the matter of the Estate of David Hamiter, late of Arkansas, deceased.

Application for Letters Testamentary on the estate of the said deceased has this day been made by Rhoda A. Hamiter, of Arkansas.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: E. J. MEIGS, Clerk.  
IVORY G. KIMBALL, Solicitor.

39-

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mathias Christmiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1883.

ANTON RUPPERT.

F. MILLER, Solicitor.

8-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the matter of the Estate of Martha E. Popkins, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Thomas H. Popkins.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
B. H. WEBB, Solicitor.

9-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of March, 1883.**

JENNIE CASTINE } No. 8,479. Equity Docket 22.  
v.  
WILLIAM CASTINE }

On motion of the plaintiff, by Mr. Pelham, her solicitor, it is ordered that the defendant, William Castine, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 12-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

EDWARD L. PALMER ET AL. } No. 8442. Eq. Doc. 22.  
v.  
HENRY O. BOWERS ET AL. }

On motion of the plaintiffs, by Mr. McPherson, their solicitor, it is ordered that the defendant, Theodore Van Heusen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: E. J. MEIGS, Clerk.  
R. W. MCPHERSON, Solicitor.

10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the matter of the Will of Louisa Joachim, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Michael Joachim.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
FRANKLIN H. MACKAY, Solicitor for Petitioner.

10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of August Koch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1883.

BARBARA KOCH, Executrix.

9-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Wood Jones, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1883.

GEORGE H. WOOD, Administrator.  
EDWARDS & BARNARD, Solicitors.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of February, 1883.**

VALENTINE McNALLY } No. 8,407. Eq. Doc. 22.  
v.  
ELIJAH J. WARD ET AL. }

On motion of the plaintiff, by Messrs. Hagner & Maddox, his solicitors, it is ordered that the defendants, Elijah J. Ward and Sarah E. Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 8-3 E. J. MEIGS, Clerk.

## Legal Notice.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 9th day of March, 1883.JENNIE K. STICKNEY, Adm'r.  
vs. Plaintiff,

No. 24,283. At Law.

EDWARD M. STICKNEY, Defendant.

On motion of the plaintiff, by Mr. Selden, her attorney, and it appearing to the court, that a summons for the defendant has been duly issued and returned "Not to be found," it is, this 9th day of March, 1883, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.  
A true copy.MAC ARTHUR, Justice.  
Test: 11-3 E. J. MEigs, Clerk.**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.

In the matter of the Estate of S. Louisa Yeabower, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by Samuel Maddox and Randall Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.  
Test: 11-3A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.

In the matter of the Estate of Moses Ogle, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Samuel E. Bond.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.  
Test: 11-3A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CATHERINE SHUGER ET AL.

No. 777. Eq. Doc.

DANIEL FOGARTY.

The petition of Ellen Walsh, in the above-entitled cause, for a rule upon Christopher Ingle, requiring him to appear on a day certain and show cause why he should not pay to the petitioner the sum of \$17.12, being before the court, and it appearing to the court that the said Ingle is beyond the jurisdiction of the court, it is, this 13th day of March, 1883, ordered, that the said Christopher Ingle, appear before this court on the 13th day of April, 1883, and show cause why the said sum of \$17.12, should not be paid to the petitioner. Provided, this order be published three times in the Washington Law Reporter before said date.

By the Court.  
A true copy.CHAS. P. JAMES, Justice.  
Test: 11-3 E. J. MEigs, Clerk.**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court Business. March 16, 1883.

In the matter of the Will of Caroline A. Dolbear, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Stillman F. Dolbear.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.  
Test: 11-3A. B. HAGNER, Justice.  
H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

JOHN E. CHAPPELL, Administrator.  
WM. D. CASSIN, Solicitor. 11-3**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

REBECCA ROSENBERG

No. 8,483. In Equity.

ALBERT D. ROSENBERG,

On motion of petitioner, Rebecca Rosenberg, by C. M. Matthews, her solicitor, it is by the court this 9th day of March, 1883, ordered, that the defendant, Albert D. Rosenberg, do cause his appearance to be entered in this cause at or before the first special term of the court occurring forty days after this date, otherwise it will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter.

By the Court.

CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 11-3 E. J. MEigs, Clerk.**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emeline Carter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1883.

DORSEY E. W. CARTER, Executor.  
H. O. CLAUGHTON, Solicitor. 11-3**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry Helmsen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

HENRY H. HELMSEN, Administrator.  
WM. T. BAILEY, Solicitor. 11-3**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of March, 1883.

REMUS FRANK FOSTER, Petitioner

No. 7118. Eq. Doc. 28.

ELLA FOSTER, Respondent.

On motion of the petitioner, by Messrs. Riddle, Davis & Padgett, his solicitors, it is ordered that the respondent, Ella Foster, cause her appearance to be entered to the amended and supplemental petition herein on or before the first rule-day occurring forty days after publication of this order: otherwise the cause will be proceeded with as in case of default.

By the Court.

D. K. CARTER, Justice.  
True copy. Test: 11-3 E. J. MEigs, Clerk.**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 14, 1883.

In the matter of the Estate of John Keefe, late of the District of Columbia, deceased.

Application for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Bridget Keefe, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
F. B. STILSON, Solicitor. 11-3



## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jourdan W. Maury, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of March, 1883.

SARAH MARIA MAURY, Executrix.

WM. A. MAURY, Solicitor.

10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., on the personal estate of Michael Shiner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of February, 1883.

PETER P. LITTLE, Administrator d. b. n.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph O. Fearson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1883.

WILLIAM H. FEARSON.

ANSON S. TAYLOR, Solicitor.

10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

THOMAS P. MORGAN, Plaintiff,

v.

No. 23,718. At Law.

ALBERT CINGRIA, Defendant.

On motion of the plaintiff, by Mr. W. F. Mattingly, his attorney, it is ordered that the defendant, Albert Cingria, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

MAC ARTHUR, Justice.

True copy. Test:

10-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

MARY POWER

v.

No. 7,704. Equity.

MARY A. J. POWER ET AL. }  
Job Barnard, trustee herein, having reported a sale of lot number four (4), and the west ten feet front of lot number three (3), in Davidson's sub-division of lots one (1) and ten (10), in square number three hundred and thirteen (313), in Washington City, in the District of Columbia, to Sarah Green, for \$3,508.33:

It is, this 8th day of March, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test:

R. J. MEIGS, Clerk.

EDWARDS & BARNARD, Solicitors.

10-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. March 6, 1883.**

In the case of Nathan A. O. Smith, Administrator of Chancey Smith, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

WM. B. WEBB, Solicitor.

10-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of February, 1883.**

MARIA BERRY

No. 8462. Equity Docket, 22.

MARY A. BYRNE ET AL.

The Marshal having returned "not to be found" as to the defendants hereinafter named:

On motion of the plaintiff, by Messrs. F. W. Jones and Thos. Jesup Miller, her solicitors, it is ordered that the defendants, J. Owens Berry, Geo. W. Gunnell, Richd. Berry, of Baltimore, Elizabeth Trott, Chas. G. Haslup, Hester King and Philip Dougherty, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test:

9-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 26, 1883.**

In the case of Ferdinand W. Rique, Administrator, c. t. a., of Caroline S. Rique, deceased, the Administrator, c. t. a., aforesaid has, with the approval of the Court, appointed Friday, the 30th day of March, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

9-3 H. J. RAMSDELL, Register of Wills.

GORDON & GORDON, Solicitors.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. February 23, 1883.**

In the matter of the Estate of William D. Aiken, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William F. Hellen.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test:

H. J. RAMSDELL, Register of Wills.

CRITTENDEN & MACKAY, Solicitor.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 2, 1883.**

In the matter of the Will of Charles A. Watts, late of the District of Columbia, deceased

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Martin F. Morris.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test:

H. J. RAMSDELL, Register of Wills.

JOHN B. LARNER, Solicitor.

9-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day March, 1883.**

KATE MARR, guardian of FRANK

T. BARRY, Complainant.

v.

No. 7,022. Eq. Doc. 20.

FRANK T. BARRY and others,

Defendants.

On motion of the complainants, by Messrs. Riddle, Davis & Padgett, her solicitors, it is ordered that the defendants, Blanche Goss, Henry Robinson, Charles Robinson, Alfreda Robinson and David Robinson, cause their appearance to be entered to the amended bill herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test:

9-3 R. J. MEIGS, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - March 31, 1883

GEORGE B. CORKHILL - - - EDITOR

## Presumption of Marriage from Co-habitation.

The case of *Hynes and others v. McDermott and others*, was an action of ejectment, in which the right of the plaintiffs to recover depended upon the question of the marriage of the adult plaintiff with the father of the infant plaintiffs, who had died seized of the property and intestate. There was no proof of a formal ceremonial marriage between the parties, and the issue having been found in favor of the plaintiffs in the court below, the appellate court was called upon to determine whether, upon the whole facts appearing in the record, the jury were authorized to find that a marriage between the parents of the infant plaintiffs was consummated prior to their birth.

There was evidence that the father was a citizen of New York and the mother was an English subject; that the parties had lived both in England and France in the apparent relation of marriage; that in England the father had said to the mother that he did not believe in the marriage ceremony; that he thereupon gave her a ring, saying if she would wear it and be true to him, he would consider her his wife as much as if they had been married in the church, &c.; there was also evidence that the British Marriage Act required all marriages to be publicly celebrated, and expressly annulled all marriages not solemnized in church, or under a license before a magistrate.

It was contended that the facts shown constituted a valid marriage under the laws of New York, which ought to control, and that the general rule that a marriage, valid or void by the *lex loci*, is valid or void everywhere, had no application to the case of a citizen of New York, temporarily sojourning abroad, who there contracts a marriage, valid according to the laws of his State, although invalid by the law of the place by reason of non-

compliance with the forms of celebration prescribed by the local law.

The court, however, did not pass upon this point, nor upon the sufficiency of the facts shown, as constituting a valid marriage under the law of England, but inasmuch as there was no proof given of the marriage law of France, assumed the law to be the same there as in New York, (82 N. Y., 41), and that the mutual consent there of the parties to assume the relation of husband and wife followed by co-habitation did constitute a valid marriage.

The opinion of the court was delivered by Andrews, J., (23 *Daily Register*, 68), and holds in addition that the presumption of marriage from a co-habitation apparently matrimonial is one of the strongest presumptions known to the law, and that this is especially true in a case involving legitimacy; that the law presumes morality, not immorality; marriage, not concubinage; legitimacy, and not bastardy; that where there is enough to create a foundation for the presumption of marriage, it can be repelled only by the most cogent and satisfactory evidence to the contrary. Citing *Morris v. Davies*, 5 Clk. and Fin., 163; *Piers v. Piers*, 2 H. L. Ca., 331; *Fenton v. Reed*, 4 John, 51; *Rose v. Paige*, 8 Paige, 574; *Canjole v. Ferrie*, 23 N. Y., 90; *The Breadalbane Case*, Eng. L. R.; *Scotch and Divorce Cases*, Vol. 1, 182; *De Thoren v. Atty. Genl.*, L. R.; 1 App. Ca., 686.

## NOTES OF RECENT DECISIONS.

*Statute of Limitations; Bankruptcy.*—The statute of limitations is not suspended while proceedings in bankruptcy are pending. [Supreme Court of Massachusetts.]

1. *Tenants in common: Disseisin; parties.*—A tenant in common of undivided real estate may recover the possession of the premises as against a mere disseisor, provided the defect of parties plaintiff is not objected to; omission to object being a waiver.

2. *Ibid: Conveyance by metes and bounds.*—Where a tenant in common conveys his interest by metes and bounds, the deed is sufficient to convey all the interest of the grantor within the boundaries described in the deed. [Crook v. Vandervoort. Sup. Ct. of Neb. Dec., 1882.]



# Supreme Court District of Columbia

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

UNITED STATES, EX REL. J. J. KEY,

vs.

T. F. FRELINGHUYSEN, SECRETARY OF STATE.

{ Decided March 19, 1883.  
The CHIEF JUSTICE and Justices MAC  
ARTHUR and COX sitting.

1. Where money due citizens of the United States has been paid, under a treaty, by a foreign government to the United States, but there is no provision as to the manner in which the money is to be distributed among the claimants; and Congress subsequently enacts a law to that end, it is within the power of Congress to repeal such law, and to provide a different mode of distribution or even to leave the claimants just as they were before the passage of the act; and this it may do either by directly repealing such law or by the ratification of a treaty inconsistent therewith.
2. The President has no power to make treaties except by and with the advice and consent of the Senate and with the concurrence of two-thirds of its members present. A treaty, therefore, which has not been thus ratified is wholly inoperative to affect antecedent laws or the rights acquired under them.
3. When Congress is in session and a law or treaty calculated to repeal an existing law is pending before it, this court, it seems, might, under such circumstances, await the final action of that body upon such law or treaty, before granting or refusing a writ of mandamus prayed for against one of the co-ordinate branches of the Government to compel it to carry into effect the existing law. But it will be otherwise when such law or treaty has been pending during two sessions and Congress has adjourned without acting upon it.

THE CASE is stated in the opinion.

S. W. JOHNSTON, R. B. WARDEN and JOHN GOODE for relator.

S. F. PHILLIPS for respondent.

Mr. Justice COX delivered the opinion of the court.

To state this case in full would require me to read the voluminous petition of the relator, and the equally voluminous return of the Secretary of State, which I think it is not necessary to do. It is sufficient to say, in general terms, that the relator in his petition sets forth the fact that certain conventions were concluded between the United States and Mexico, providing for the determination of claims of citizens of each republic against the other: that in pursuance of that convention, a board of commissioners assembled in Washington, to adjudicate these claims, and in the

course of their proceedings made an award in favor of Benjamin Weil for a large sum of money, the petitioner being an assignee of Benjamin Weil for a small portion of that award. He sets forth, further, that the act of June 7, 1878, required the money paid by Mexico on these claims to be deposited in the hands of the Secretary of State, and made it his duty to pay it out to the parties named in those awards, or their assignees; and that the Secretary, in pursuance of that act of Congress, had paid out all the installments that had been received from Mexico, except one, then in his hands, which he declined to pay, and he asks the mandamus of this court to require him to disburse the money. After argument on the face of the petition, as upon demurrer to it, the court issued an alternative mandamus, and to that the Secretary has made a return. That return was demurred to, and that demurrer was argued before us at the close of last week. The ground taken by the Secretary will be manifested as I proceed.

The first section of the act of Congress of June 18, 1878, provides:

"That the Secretary of State be, and he is hereby, authorized and required to receive any and all money which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and Mexican Republic for the adjustment of claims, concluded July 4, 1868, and April 29, 1876; and whenever, and as often as any installments shall have been paid by the Mexican Republic, on account of said awards, to distribute the moneys so received in rateable proportions among the corporations, companies or private individuals respectively in whose favor awards have been made by said commissioners, or by the umpires, or to their legal representatives or assigns."

If the act had stopped here, there would be a plain ministerial duty created by it for the benefit of the parties in whose favor the awards were made, admitting of no exercise of discretion and proper to be enforced by mandamus if its performance was refused.

But the language in question is followed by the terms, "except as in this act otherwise limited and provided." And we are referred to the 5th section for the exceptions or limitations to the duty enjoined in the first.

This enacts, "that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican government as to the cases hereinafter named, and if he shall be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity, require

that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such cases shall be retried and decided in such manner as the governments of the United States and Mexico may agree, or until Congress shall otherwise direct."

It is obvious that the power to withhold the payment of the awards is given on a condition, to wit, *if the President shall be of opinion that the honor of the United States, the principles of public law or considerations of justice and equity require that the awards shall be opened and retried*. If the President should not be of that opinion, no power is given to withhold payment, but the cases lie outside of the exception and fall within the general injunction of the first section.

The case further shows that President Hayes, through Mr. Evarts, Secretary of State, did investigate the charges of fraud presented by the Mexican government, as to the cases above named, in compliance with the act of Congress, and on the 15th of April, 1880, communicated to Congress, as the result of that investigation, the opinion of Mr. Evarts, in which the latter says:

"I conclude, therefore, that neither the principles of public law nor considerations of justice or equity *require or permit, as between the United States and Mexico*, that the awards in these cases should be opened and the cases retried before a new international tribunal or under any new convention or negotiation respecting the same between the United States and Mexico."

I take it for granted that in transmitting this opinion to Congress as the action of the executive, taken in pursuance of the act of Congress, the President is to be considered as adopting this opinion of the Secretary and communicating it as his own.

In addition to the above, he does, indeed, say that the honor of the United States, in his opinion, requires that these cases be investigated by the United States. But this was not provided for by the act of June 18, 1878, nor was such an opinion made a condition of the power, or declared to be the ground of any authority to withhold the awards. The condition expressed was the opinion of the President, that the awards, *i. e.*, the judgments, as between the United States and Mexico, should be opened and the cases, *i. e.*, as international cases, be retried, *i. e.*, tried again, tried as before by an international tribunal. This is further manifest from the fact that payment was to be withheld until the cases

should be retried and decided in such manner as the United States and Mexico might agree or until Congress should otherwise direct. In other words, if the President should think the cases ought to be retried, the awards were to be withheld for another international trial, not a Congressional investigation, or until Congress should direct otherwise; *i. e.*, that they should not be so withheld.

It must be apparent, then, that so far the condition had not happened which, under the 5th section of the act of June 15, 1878, would warrant the Secretary of State in withholding payment of the awards, and in the absence of any subsequent legislation, modifying that act, "it would," in the language of Mr. Evarts, "appear to be the duty of the executive to accept these awards as no longer open to reconsideration and proceed with payment of the same *pro rata* with all other awards under the convention."

But the question is made whether the power conferred by the 5th section of the act of June, 1878, was exhausted by President Hayes' exercise of it, or, on the contrary, was a continuing or recurring power which may be exercised by any succeeding President; *i. e.*, whether any such President may re-investigate the subject, and if he should be of a different opinion from President Hayes, may withhold payment of the instalments yet undistributed.

It will be remembered that the grant of this power is prefaced by a request to the President to investigate the charges of fraud. If he (who is thus requested) shall be of opinion, &c., &c., it shall be lawful for him to withhold payment, &c.

The duty devolved and the power conferred refer to the same person.

The request was obviously addressed to the existing President, and when he made the investigation and announced the result, this request was satisfied. It cannot be considered a continuing and reiterated request to each succeeding President to re-examine the subject, and consequently the power to withhold the payment of the awards which was to result from that examination must be deemed equally limited.

These considerations furnish an answer to one of the positions taken in the return of the Secretary.

The principal and most important ground assigned by the Secretary for withholding payment, is the fact that the President has negotiated a treaty with Mexico for the opening of the awards, which is now pending before the Senate for ratification, having been submitted to that body, it is said, during the

first session of the Congress just expired.

In answer to this, it is denied by the claimant that the United States has any power, by a new treaty, to disturb the awards in question. It is argued that they confer vested rights on the claimant which he cannot be constitutionally deprived of either by a law or a treaty.

We do not deem it necessary to express any opinion on this question, because it is not involved in the issue before us. That issue is, whether a ministerial duty is devolved by law on the Secretary of State, to pay this money, which we are to enforce by mandamus. Neither the claims convention, under which the awards were made, nor the awards themselves, imposed any such duty or contained any provision as to the person by whom, or the manner in which, the money awarded should be disbursed. Legislation was necessary for that object, and that legislation is found in the act of June, 1878. Congress might have enacted a different law. It can undoubtedly repeal that law and enact a different mode of distribution, or leave the claimants just where they were before the act was passed. And if that had been done, the Secretary of State would be relieved of the duty of distribution, and we could not charge him with it. But this would not affect the question whether the awards themselves could be set aside by a new convention. And whether that could be lawfully done or not, yet if such a treaty should be made, it would be a law, at least so far as it would admittedly be within the constitutional power of the government. It would at least be valid so far as to repeal the act of June, 1878, providing for a distribution of this money. If the United States could do this much by an act of Congress, it could equally do it by a treaty inconsistent with the existing law, for such a treaty has the force of law under the Constitution. But whether the citizen could still insist on the award as his property and call on Congress to pay him in some other way, is an entirely different question, and one which we are not called on to decide.

The question remains, what effect has this pending treaty on the rights of the claimant under the act of 1878?

By the constitution it is declared, that all treaties made under the authority of the United States shall be the supreme law of the land.

But a treaty only becomes the law of the land when it is made and completed. The President has no power to make treaties except by and with the advice and consent of the Senate, and with the concurrence of two-

thirds of its members present. Until those conditions concur, a treaty negotiated is no more the law of the land than a bill introduced into one of the Houses of Congress, but not yet acted on by either. Not being yet law, it is wholly inoperative to affect antecedent laws or the rights acquired under them. It furnishes no more excuse for disobedience to an existing law than would the pendency in Congress of a bill to repeal it. It is manifest, therefore, that the pendency of this treaty is no legal bar to the claimant's assertion of his rights under the act of 1878.

We have been embarrassed in this case by the appeal to the courtesy of the court which, it is said, is due to a co-ordinate branch of the government. It is said that the issuing of a mandamus is within the discretion of the court. And it is said that if Congress had been in session when this application was made, and a bill were pending to repeal the existing law, the court would hardly interpose by its mandamus; and that the same should be the case where a treaty is before the Senate. If Congress were in session at this time, and any such law or treaty were pending before it, we should hesitate a long time before anticipating its action, and perhaps feel absolutely constrained to await the final action of Congress or the Senate, as the case might be. But this treaty was submitted during the first session of the Congress which has just expired; it has been before the Senate two sessions of that Congress, and has not yet been ratified. It cannot even be considered again for a period of nine months; that is, until another session of Congress. We are told that to the Almighty a thousand years are as one day, and one day as a thousand years; and something similar to that may be said of governments. To the government, years and days are about alike; it loses nothing by delay. But that cannot be said of the private citizen. Delay to him is often ruinous, and to withhold his remedies for one or two years is to deny him justice, and to do so out of courtesy to a co-ordinate branch of the government is to make that an excuse for positive injustice. We think under the circumstances of this case we are no longer at liberty to withhold the writ applied for, and that the writ of mandamus must issue.

THE ratifications of the treaty with Madagascar were exchanged on Tuesday, in Washington, and the treaty was proclaimed by the President.

THE Illinois House of Representatives on Tuesday passed a bill establishing the whipping-post for wife-beaters.

## United States Supreme Court.

No. 1,185.—OCTOBER TERM, 1882.

THE UNITED STATES, ex rel. Ward B. Burnett, Plaintiff in Error.

vs.

HENRY M. TELLER, Secretary of the Interior.

*In Error to the Supreme Court of the District of Columbia.*

### STATEMENT.

By an act passed March 3, 1873, entitled "An act to revise, consolidate and amend the pension laws," (17 Stat., 569, section 4; Revised Statutes, section 4,698), it was provided that from and after June 4, 1872, all persons entitled by law to a less pension than thereafter specified, who, while in the military or naval service of the United States and in the line of duty, had been so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal attendance of another person, should be entitled to a pension of thirty-one dollars and twenty-five cents per month.

Afterwards, by an act passed June 18, 1874, a pension of fifty dollars per month was granted to the persons described in the act of March 3, 1873, in lieu of the pension of thirty-one dollars and twenty-five cents granted by that act.

By an act approved June 16, 1880, it was provided as follows: "All soldiers and sailors . . . who are now receiving the pension of fifty dollars per month," under the act last aforesaid, "shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid to them, in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars per month." The act further declared "that all pensioners whose pensions shall be increased by the provisions of this act, from fifty dollars per month to seventy-two dollars per month, shall be paid the difference between said sums monthly, from June 17, 1878, to the time of the taking effect of this act."

Prior to the passage of the last mentioned act Congress had passed an act, which was approved March 3, 1879, "granting an increase of pension to Ward B. Burnett," which was as follows: "That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll the name of Ward B. Burnett, and pay him a pension of fifty dollars per month in lieu of the pension he now receives; but nothing in this act contained shall entitle the said Ward B. Burnett to arrears of pension." 20 Stat., 665.

On October 20, 1882, Ward B. Burnett, the person named in the special act above mentioned, filed in the Supreme Court of the District of Columbia, as relator, in the name of the United States, a petition against Henry M. Teller, Secretary of the Department of the Interior, in which he recited the foregoing legislation of Congress, and averred that he was a survivor of the war with Mexico, and other wars, in which he was an officer in the army of the United States; that he was wounded at the battle of Cherususco on August 24, 1847; that for wounds received in battle he was granted, under a general pension law of Congress, a pension at the rate of thirty dollars per month, which he received from August 1, 1848, until March 3, 1879; that under the special act of the date last mentioned a pension certificate, dated June 6, 1879, signed by the Secretary of the Interior and countersigned by the Commissioner of Pensions, was executed and delivered to him, on which he was paid from March 3, 1879, to June 4, 1882, a pension at the rate of fifty dollars per month.

The petition further alleged that the relator had applied to the Commissioner of Pensions to be paid the increased rates of pension authorized by the said acts of Congress, approved respectively June 8, 1872, June 18, 1874, and June 16, 1880, and had received another pension certificate, dated July 17, 1882, which recited that the relator was entitled to a pension at the rate of thirty dollars per month, to commence on August 1, 1848, and of thirty-one and one-fourth dollars per month from June 4, 1872, and of fifty dollars per month from June 4, 1874, and seventy-two dollars per month from June 17, 1878; that on July 21, 1882, the relator returned to the Secretary of the Interior the pension certificate which had been issued to him under the special act of Congress passed March 3, 1869, granting him a pension of fifty dollars per month; that when he returned said certificate he was without the advice of counsel, and was fearful that he would be deprived of his greater pension under the general pension laws; and that, on October 4, 1882, relator respectfully demanded in writing of the Secretary of the Interior that he return to him said certificate, which the Secretary, by his decision made October 18, 1882, refused to do. The petition prayed for the writ of mandamus to compel the Secretary to return said certificate to the relator, and to cause to be paid to him the accrued pension due thereon.

The Secretary of the Interior filed an answer to this petition, in which he alleged that since June 4, 1872, the relator had received under

the pension laws payments as follows: from June 4, 1872, to June 4, 1874, the sum of \$750, being at the rate of \$31.25 per month; from June 4, 1874, to June 17, 1878, the sum of \$2,421.66, being at the rate of \$50 per month; from June 17, 1878, to June 4, 1882, the sum of \$3,424.80, being at the rate of \$72 per month; from June 4, 1882, to September 4, 1882, at the same rate, \$216; making in all the sum of \$6,812.46; and that, in addition to these payments under the general laws, he had received, under the special act of March 3, 1879, granting him by name a pension at the rate of fifty dollars per month, payments as follows: From March 3, 1879, to June 4, 1882, the sum of \$1,951.67, being at the rate of \$50 per month.

The answer further alleged that on July 21, 1882, the relator addressed a letter of that date to the Secretary of the Interior, with which he returned the certificate dated June 17, 1882, issued to him under the special act of March 3, 1879, granting him a pension of \$50 per month. That letter was as follows:

"WASHINGTON, July 21st, 1882.

"HON. H. M. TELLER,  
"Secretary of the Interior.

"SIR: To relieve your department from further embarrassment in reference to what has been styled Gen. Ward B. Burnett's claim of double pension, I hereby return to you my certificate, and relinquish any claim that I may have under it from date of this letter, made under a special act of Congress (increase), dated March 3d, 1879, upon which I have been drawing fifty dollars per month, and shall be satisfied with receiving my pension under the general pension laws, granted by yourself, under the several opinions of the Attorney-General, dated July 17, 1882, until Congress, in its bounty, shall think proper to increase my pension of seventy-two dollars per month under said general pension laws again.

"I have the honor to be,  
"Very respectfully yours,  
"WARD B. BURNETT."

The case having, by stipulation of parties, been heard in the first instance at the general term of the Supreme Court of the District, a judgment was rendered dismissing the petition. This writ of error is prosecuted to review that judgment.

Mr. Justice Woods delivered the opinion of the Court:

The relator does not claim that there is anything due him under the pension laws prior to June 4, 1872. It appears from the answer of the Secretary of the Interior, and

there is no evidence to the contrary, that since June 4, 1872, the relator has received every cent that is due him under the general pension laws. The special act of March 3, 1879, declared that the pension of fifty dollars thereby granted should be in lieu of the pension the relator was then receiving, and, at least, cut off all claim to arrears of pensions under that act. All, therefore, that is left of his case is his contention that he is entitled not only to the pension of seventy-two dollars per month allowed him by the general act of June 16, 1880, and which has been paid him, but in addition thereto the pension of fifty dollars per month granted him by name by the special act of March 3, 1879.

It appears from the answer of the Secretary of the Interior that the relator was, under the advice of the Department of Justice, paid both pensions from March 3, 1879, to June 4, 1882. The complaint of the relator is that the payment of double pensions is not continued, and it is for the purpose of enforcing his right to his special pension of fifty dollars, in addition to the general pension of seventy-two dollars, that he asks that the Secretary of the Interior may be compelled to return the certificate issued to him under the special act.

The right of the relator to double pensions, if he ever had such right, has been effectually cut off by section five of the act of July 25, 1882, which declares "that no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive, in addition thereto, a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law."

It was competent for Congress to pass this act. No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute or recall, at its discretion. *Walter v. Collier*, 19 How., 355. Therefore, the contention of the relator, that having received the pension of seventy-two dollars under the general law, he is also entitled to the pension of fifty dollars granted him by the special act, is without ground to rest on.

His pension certificate, issued under the special act, can be of no service to him unless he wishes to relinquish the pension of seventy-two dollars under the general law, and fall back upon the pension of fifty dollars granted him by the special act. But he expresses no such purpose. His object is to get the certificate in order to draw double pensions, which

the law says he shall not have. He voluntarily surrendered his pension under the special act, in order to receive the larger pension to which he became entitled on the passage of the general act of June 16, 1880. As he is not entitled to any pension money upon the certificate under the special act, which he voluntarily surrendered, unless he waives his right to receive the larger pension given him by the general law, which he does not do, a judgment that the certificate be returned to him would be futile. From all that appears by the record the relator has been accorded by the officers of the Department of the Interior and of the Pension Bureau all his rights. Up to September 4, 1882, he has been paid all the pension money due him under any act of Congress. After that date he is entitled under existing law to a pension of seventy-two dollars per month and no more, and this the Pension Bureau is ready to pay him. The Supreme Court of the District was, therefore, right in refusing the writ of mandamus, and its judgment must be affirmed.

#### Construction of Will.

#### APPEALS OF BARGER, HIRST ET AL.

##### *Supreme Court of Pennsylvania.*

A testator devised and bequeathed to his wife the residue of his estate in trust to apply the income of the same to herself and to his children living at his death in equal shares, empowering her, at the expiration of seven years from his death to make partition of his real estate to and among his children (the children of those deceased to take their parent's share), and allot to them their several and respective shares, expressly ordering and declaring that until such partition was made no interest was to vest in any of his children. He also gave his wife such power over the income of the estate that she might retain any child's share until the distribution of the *corpus* of the estate was made, and then incorporate the same with such child's share.

*Held*, that no child had any vested interest in the testator's estate until partition was made, and that any income retained became a part of the estate, and did not vest until the share of which it formed a part was allotted.

A, one of the children of the said testator, having mortgaged his interest in the said estate, afterwards died within the seven years. Upon distribution of the account filed by the trustee of testator's estate, the mortgagee claimed arrears of interest out of the share of income to be awarded to the estate of A.

*Held*, that upon the decease of A, all his right and title to the estate ceased; that his administrators were not entitled to any part of the income thereof, and that the mortgagee could not collect the arrears of mortgage.

*Held further*, that a grandchild, being a child of A, took immediately from the testator, and not from his parent.

*Also held*, that the retention of income under

the testator's will was not in conflict with the statute forbidding perpetuities.

Where payments are made by an accountant to preserve the capital as well as the income of an estate, each of these accounts should bear a proportionable share of such payments.

Appeals from the decree of the Orphans' Court of Philadelphia county.

These were appeals (1) of Adele H. Barger, Fannie C. Hirst, James R. Hirst, Anthony A. Hirst, Adele H. Barger, trustee, Stephen C. Hirst, and Lydia B. Hirst, guardian of the minor children of William L. Hirst, sr., deceased; (2) of Anthony A. Hirst, administrator of the estate of William L. Hirst, jr., deceased; (3) of The Philadelphia Trust, Safe Deposit and Insurance Company, trustee under the will of William L. Hirst, deceased; and (4) of Edwin De Forest Hirst, from certain decrees of the Orphans' Court of the county of Philadelphia, in the matter of the estate of William L. Hirst, deceased.

The facts were as follows: Mr. William L. Hirst, a well known lawyer of Philadelphia, died in August, 1876, leaving a widow and eleven children. By his will Mr. Hirst devised and bequeathed his residuary estate to his wife, in trust to apply the net income, one-third to herself during widowhood and two-thirds among his children living at his death, and authorizing partition to be made among his children at the expiration of seven years from his death,

Mrs. Hirst was discharged as trustee on her own petition by the Orphans' Court, and The Philadelphia Trust, Safe Deposit and Insurance Company appointed in her place. The latter having filed an account as trustee aforesaid, both as to principal and income, the same came in due course for audit before PENROSE, J., in the Orphans' Court.

It appeared that William L. Hirst, a son of the testator, had executed a bond, dated October 28, 1878, in favor of one Mary Clark, conditioned for the payment of \$1,500 in five years from the date thereof, with interest, payable quarterly. The bond contained a provision to the effect that if default should be made in payment of interest for the space of thirty days after any quarterly payment should fall due, then the whole principal sum should, at the option of the obligee, become due and payable. Accompanying this was a mortgage, whereby the said William L. Hirst, jr., conveyed all his right, title and interest in the estate of his father William L. Hirst, sr., deceased, real, personal and mixed to secure payment of said obligations, with the usual clause, providing that if default should at any time be made for thirty days in payment of

interest, a writ of *scire facias* could at once issue to collect the entire debt and interest due.

William L. Hirst, jr., the mortgagor, died March 17, 1880. It appeared that during his lifetime the interest on Mrs. Clark's mortgage had been regularly paid, but the interest falling due April 28, 1880, and all interest falling due thereafter, had not been paid.

Notice of the mortgage was given by the mortgagee to the trustees of the estate of William L. Hirst, jr., March 5, 1879, and demand was thereby made for all sums which would otherwise be paid to the mortgagor, William L. Hirst, jr.; and the share of the latter's income of the estate from that time was now claimed by counsel for mortgagee.

But it was found as a fact by the auditing judge that it was the intention of the parties that no possession should be taken by the mortgagee of any part of the property mortgaged before default, and all claim as to interest of the mortgagee prior to his death was disallowed.

The period fixed in the will for distribution of principal had not arrived and will not arrive till August, 1883, and it was contended by counsel for the trustees and children of testator that all the interest of William L. Hirst, jr., in the income of the estate ceased with his death. But the auditing judge held that William L. Hirst, jr., as one of the children of William L. Hirst, sr., deceased, under the will of the latter had a vested interest in one-eleventh part of two-thirds of the net income of the estate from the death of the testator until the time fixed for distribution of the principal, viz., at the expiration of seven years from the testator's death; that is to say, August 30, 1883. And he further held that this interest in income passed by the mortgage executed by William L. Hirst, jr., to Mary Clark. And he awarded her all the share of income covered by the account to which William L. Hirst would have been entitled if living.

The auditing judge, at the instance of counsel for Mary Clark, struck out certain credits claimed by the accountants as payments out of income, and directed that the same should be charged to capital account.

The circumstances upon which this question arose were as follows:

The estate held a ground-rent of \$3,900, issuing out of premises known as the West End Hotel. In April, 1879, the ground-rent, being in arrears for several years, and there being also unpaid taxes for the years 1877-8, as well as taxes and water-rent for the current

year upon the property, an agreement under seal was made between the trustees, at the request of their *cestuis que trustent*, as owners of the ground-rent, Mr. Hume, the owner of the land, and a Mrs. Martin, who had a five years' lease of the premises from October 1, 1879, whereby it was stipulated that all the rent reserved by said lease should be paid by said lessee to the trust company, in consideration whereof the latter were, "to pay the taxes for 1877 and 1878, and for their reimbursement to retain the lien of all ground-rent accrued prior and up to October 1, 1879, inclusive," also "out of the rents to be paid under said lease to pay the taxes and water-rent on said premises to accrue during the term, and to appropriate the balance of such rents to the ground-rent to accrue and fall due during said term." As to any excess of ground-rent accruing during said term, seventy-five per cent. to remain a lien. Ground-rent accrued prior to October 1, 1879, to remain a lien to the extent of the full amount to be paid for taxes for 1877 and 1878.

Under this arrangement the trustees received rental from October 1, 1879, to December 10, 1880.....	\$3,500 00
They paid taxes, etc., for 1880.....	1,072 20
Leaving a balance of.....	\$2,427 80

They also paid taxes and water-rent for 1879, amounting to \$1,451.73, which they claimed was payable out of the rental under the agreement.

They also paid taxes and costs for 1877	\$1,615 75
Taxes and costs for 1878.....	1,469 80
	\$3,085.55

To which amount, under the agreement, they are entitled to retain the lien of the ground-rent accrued and in arrear prior to October, 1879.

Credit having been claimed for these payments in the income account, the auditing judge struck them out, and ordered them charged to principal. To this is as well as to the ruling William L. Hirst, jr., had any interest in income accruing after his death, and the award to Mary Clark, exceptions were taken. But all exceptions were dismissed by the court in banc, and the adjudication confirmed.

Shortly after the decision of the court of the court in banc, the administrator of William L. Hirst, jr., made a formal tender to Mary Clark, the mortgagee, of all interest accrued and unpaid on the mortgage. On her refusing to accept the same, the administrator presented his petition to the Orphans' Court, setting forth the facts relating to the mortgage,

and the tender of the interest and its refusal, averring that the amount awarded to Mary Clark, the mortgagee, had not yet been paid over; and praying that the adjudication be reopened and the award to Mary Clark be rescinded, and that the share of income of William L. Hirst, jr., be awarded to the petitioner. To this an answer was filed by the trustees submitting to such orders as the court should make, and an answer by Mary Clark, setting up that her rights had been determined by the adjudication, that the questions raised by the petition had then been passed upon and determined, and that the tender was too late. After argument, the court entered an order dismissing the petition, ASHMAN, J., delivering the following opinion.

"The bill of review presented by the petitioner raised a question which was not discussed at the argument, and opens up points of some difficulty. The son of the testator had mortgaged his interest in his father's estate by an instrument which provided, in the usual form, that upon default in the payment of interest the whole principal should be presently payable. Such a default occurred after his death, and the mortgagee claimed and was awarded the portion of income which had been decided to have vested in the mortgagee. The reason for this award was, that after condition broken the mortgagee was entitled to possession: *Smith v. Shuler*, 12 S. & R., 240. But it is claimed with great force that as to the fund in hand, the mortgage was of a chattel interest, possession of which could be secured only by pursuing the remedy given in the instrument itself. The mortgage could not be treated as a simple assignment of the legatee's interest, because, by its terms it was not payable until five years after the testator's death, except in the event of a forfeiture. The mortgagee could claim therefore only by virtue of the forfeiture. But the proper form in which to present this claim was a court of common law, and the proper remedy was by a suit upon the mortgage. To the extent of its limited jurisdiction the Orphans' Court is essentially a court of equity, and equity will not enforce a penalty: 2 Story's Eq., section 1, 319; *Oil Creek R. Co. v. Atlantic & Great Western R. Co.*, 7 P. F. Smith, 65. It would result from this reasoning that the share of income in question should be awarded to the petitioner as administrator of the estate of William L. Hirst, jr., deceased. This question, however, can be authoritatively determined by the Supreme Court, in the present state of the record, upon the appeal which has been already taken, and we therefore dismiss the petition."

Opinion by MERCUR, J. Filed October 2, 1882.

These four appeals are from the same decree. They were argued together. The main contention is, whether William L. Hirst, jr., had a vested interest, continuing after his death, in the income of his father's estate. William L. Hirst, sr., died 30th of August, 1876, leaving a widow and eleven children. William, the junior, died intestate 17th of March, 1880, leaving a son, Edwin, one of the appellants.

After disposing of certain specific property, William L. Hirst, sr., in the fifth article of his will, devised and bequeathed to his wife all the residue of his real and personal estate, in trust to apply one-third the net income to herself during her widowhood, and two-third parts thereof among his children living at the time of his death, each child to have an equal share. In the sixth article, after giving to his wife full and absolute power and authority to sell at any time, and to make title to all his real estate, except to pieces specified, the proceeds to be invested and treated as realty, the testator proceeds, "and at the expiration of seven years from my death, I hereby authorize and fully empower my wife, at any time in her discretion, to make partition of all my real estate then unsold to and among my children (or if any shall die, to their children the parent's share), according to the proportions named in article fifth." After giving her power to allot the several shares, and change such as may be necessary to equalize their values, it proceeds, "the said partition and allotment so made by declaration under her hand and seal, and acknowledged and recorded, shall vest the estates, according to the terms thereof, as fully as if herein devised. And my wife shall in said partition and declaration allot to and vest the shares of all my children, except the eldest six, in herself, as trustee of said young children, upon such trusts as she shall in said declaration set forth and establish. And my said wife shall at the time, or at any time thereafter in her discretion, make distribution of all the remainder of my estate according to the interests and proportions named in said article fifth." The testator further proceeds: "And I expressly declare and order that my said wife may, in said declaration and said distribution, make and declare any and all trusts and limitations as she may then deem necessary or proper for the welfare of my children, or any or each of them; and that until then no interest in my estate shall vest in them or either of them, except as provided in said article fifth; and as to that interest, my said wife may, in her discretion, retain



the whole or any part of each child's proportion until said declaration or distribution and incorporate it therein." William L. Hirst, jr., was one of the six elder children.

It is very clear the testator did not intend that, on his death, any estate should vest in his son. The property was not given to him, but to the wife of the testator in trust. On and after the expiration of seven years from the death of the latter, she was authorized to make partition and allotment among all the children. This partition and allotment then made was to vest the estate in each one to whom a portion was allotted. This language clearly precluded the idea that an estate vested in any child prior to that time. Not only must the seven years have expired, but his wife must have made the distribution and declared all trusts and limitations that she thought proper. To remove all doubt as to the intention of the testator as to the time any estate should vest in his children, he proceeds to declare "until then no interest in my estate shall vest in them or either of them." The exception referred to the income only. It will be observed, however, that during the seven years there was no express devise of income to the children in the fifth article, but his wife was "to apply" the same for their benefit. That, however, was so changed in the sixth article as to leave it discretionary with her whether to apply any part of the income within the seven years, or to withhold all of it until the distribution of the *corpus* of the estate was made, and then incorporate in each child's proportion the sum thus withheld. When the income arising from any share was so retained, it became a part of the principal, and did not vest until the share of which it formed a part was allotted.

In case of the death of any of the children within the seven years, and consequently, before any partition or allotment made, then the portion which the parent otherwise would have received was to be allotted to and vested in the child or children of the one so dying. In such contingency no interest vested in the child of the testator, but the estate passed directly from the testator to the grandchild. The fact that the trustee was authorized, in her discretion, to apply some or all of the income for the benefit of the children did not vest it in any child until so applied. The gift takes effect only in the issue of the dead child, and is, therefore, a substantive gift to the issues. Theobald on Wills, 494. The application of income for the benefit of the children within the seven years rested solely in the discretion of the trustee. During that time nothing tangible passed to the children on

which they could execute a valid mortgage. Perry on Trusts, section 386 a, 386 b. The right to the income ceased when the right to acquire the capital was barred. *Comfort v. Austin*, 12 Simmons, 218. As then, under the discretionary power of the trustee, she did retain the undistributed income, it did not vest in William L. Hirst, jr., and his administrator cannot now claim it. *Huber's Appeal*, 30 P. F. Smith, 348. This view in regard to discretionary powers is not in conflict with the statute forbidding perpetuities. *Brown et al. v. Williamson's Executors*, 12 Casey, 338; *Huber's Appeal*, *supra*. The appellant, Edwin DeForrest Hirst, did not take the estate by transmission through his father, William L. Hirst, jr., but took that which the latter might have acquired had he lived until the expiration of the seven years. *Pleasanton's Appeal*, 11 W. N. C., 273. The appellee presents no equities arising from ignorance that the mortgagor held no vested interest when she took the mortgage. He had previously notified her in writing that, "by the provisions of the will, no interest of any kind whatever vest in myself or in any of the children until the execution of the deed of distribution, seven years after the death of my father." She did not take any possession of the property sought to be mortgaged prior to the death of the mortgagor. The court, therefore, erred in decreeing any portion of the fund to Mary Clark.

The question whether the sums aggregating \$5,680.16 should be chargeable to income account or to principal is not free from difficulty. We cannot agree with the conclusion of the auditing judge that they were paid exclusively to preserve the capital of the estate, nor are we able to see that they enured exclusively to the benefit of the income fund. The object of the agreement of the 16th of April, 1879, appears to have been to aid both income and capital. These sums were paid in furtherance of that object. Each, therefore, should bear a share, and it seems to us equitable to divide this gross sum equally between income and principal. Further than this, the assignments of error are not sustained.

The appeal of Anthony A. Hirst, administrator of William L. Hirst, jr., is dismissed at his costs.

As to the several other appellants, the decree is reversed, and it is ordered that distribution be made conformably with this opinion. It is further ordered that the appellants each pay one-half of the costs of their respective appeal and the appellees the other half.

THE first appearance deceives many.—JUV.

## The Courts.

### U. S. Supreme Court Proceedings.

MARCH 26, 1883.

The following gentlemen were admitted to practice during the past week:

E. A. Perry, of Pensacola, Fla.; Felix Brannigan and John B. Sweat, of Washington, D. C.; Green B. Raum, of Golconda, Ill.; Robert Jay Sullivan, of Cincinnati, Ohio; Edwin S. Jeune, of Syracuse, N. Y.; Lorenzo A. Bailey, of Washington, D. C.

No. 152. John A. Elliot v. George A. Sackett et al. From C. C. U. S., S. D. of Ills. Decree reversed and cause remanded. Opinion by Mr. Justice Blatchford.

No. 170. Martin Basket v. M. J. Hassell, administrator, &c. From C. C. U. S., D. of Ind. Decree affirmed. Opinion by Mr. Justice Matthews.

No. 139. George W. Ewell v. Thomas Daggs. From C. C. U. S., W. D. of Texas. Decree modified. Opinion by Mr. Justice Matthews.

No. 178. The United States v. Frank and Howard Phelps. To C. C. U. S., S. D. N. Y. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 183. Levi Goldenberg et al. v. Thomas Murphy, late collector, &c. To C. C. U. S., S. D. N. Y. Judgment reversed and cause remanded. Opinion by Mr. Chief-Justice Waite.

No. 188. R. M. Barton, jr., assignee, &c., v. John Gellier. To S. C. Tenn. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 976. R. W. Shauwald, receiver, &c., et al. v. Isaac J. Lewis. From C. C. U. S., D. of Nev. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 531. Benjamin F. Hilton v. William H. Dickinson. From S. C. D. C. Dismissed. Opinion by Mr. Chief-Justice Waite.

No. 1235. John Devlin v. B. S. Hilton et al. From S. C. D. C. Dismissed. Opinion by Mr. Chief-Justice Waite.

No. 9. Original. In re William G. Warden et al. Petition for writ of Mandamus denied. Opinion by Mr. Chief-Justice Waite.

No. 8. Original. In re Canada Southern R. R. Co., petitioner. Rule to show cause granted.

MARCH 27, 1883.

No. 133. The District of Columbia v. The Washington Market Co. Argument concluded.

No. 209. Samuel T. Williams v. B. L. Jackson et al., and

No. 482. B. L. Jackson et al. v. Jennie K. Stickney, administratrix, etc. Argument concluded.

MARCH 28, 1883.

No. 210. John L. Merriam v. The United States. Argument concluded.

No. 213. M. L. Ensminger v. J. C. Powers et al. Argued and submitted.

No. 214. The Miami, Columbus & Zenia R. R. Co. v. The United States. Argument concluded.

No. 215. L. J. Davis et al. v. The State of South Carolina. Argued only by the counsel for the plaintiffs.

MARCH 29, 1883.

No. 510. A. K. P. Buffam et al. v. The Oakland Manufacturing Co. From C. C. U. S., D. of Maine. Decree affirmed per stipulation.

No. 216. William G. Gage et al. v. James W. Herring et al. Argument concluded.

No. 217. Richard A. Robinson et al. v. The Memphis & Charleston R. R. Co. Submitted without argument.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

U. S., ex rel. John J. Key, v. Frederick T. Frelinghuysen, Secretary, &c. Demurrer to defendant's answer sustained. Defendant commanded to pay to the relator, as assignee of Benjamin Weil, \$7,595.39, out of the money in his custody. Awarded, &c.

MARCH 20, 1883.

Lewis D. Means et al. v. Wm. S. Hoge et al. Ordered that so much of the decree of Special Term as dismissed the bill of review be affirmed, and so much of the decree dismissing the bill be reversed.

Geo. A. Arnes v. Otis Bigelow et al. Rule on defendant to show cause why he should not be punished for contempt for failure to execute the decree of the court.

Mary F. Mason, administratrix, v. J. B. Bryan et al. Appeal dismissed without prejudice.

MARCH 22, 1883.

Fish, Clark & Flagg v. Hollander Bros. Hearing of motion for stay of injunction and motion to amend the decree postponed to March 29, 1883.

W. W. McCullough v. Diller B. Goff. Plaintiff notified of motion made by the defendant to dismiss appeal.

Michael A. French v. Wm. H. Campbell et al. Argued and submitted.

MARCH 23, 1883.

Frank Irvine was admitted to practice.

MARCH 26, 1883.

French v. Campbell. Decree affirmed. Opinion by Mr. Chief-Justice Cartter.

Ames v. Bigelow. Time to answer rule extended.

MARCH 27, 1883.

Butler v. Scott. Argued and submitted.

Zug v. Barrett. Argued and submitted.

MARCH 28, 1883.

Jones v. Smith. Argued and submitted.

Cornelius v. De Vaughn. Judgment reversed and cause remanded. Opinion by Mr. Chief-Justice Cartter.

Strong v. Barbour. Appeal dismissed.

MARCH 29, 1883.

Hook v. Lay. Dismissed.

United States v. Smoot. Same.

Looney v. Quill and Quill v. Looney. Decrees of Special Term affirmed.

### EQUITY COURT.—Justice James.

MARCH 21, 1883.

Brown v. Brown. Time extended to take testimony.

Shiner v. Shiner. Payment to guardian ordered. Oertley v. Oertley. Leave to file bill of review granted.

Shoemaker v. Campbell. Same.

Conlon v. Dist. of Col. et al. Decree vacated with leave to amend.

Henson v. Hill. T. S. Blandford made party defendant.

Lord v. O'Donoghoe. Decree pro confesso made final and sale by trustees ordered.

Moore v. Moore. Sale ratified nisi.

Castine v. Castine. Appearance of absent defendant ordered.

Lucas v. Johnson. Same.  
Grayson v. Johnson. Trustee appointed to convey.

Schell v. Ebert. Sale finally ratified.  
Ward v. Ward. Sales finally confirmed.  
Mackall v. Mackall. Commission to take testimony of absent witness ordered.

Webster v. Coltman. Motion to dismiss overruled.

Barber v. Gilmore. Decree pro confesso on defendant, Peoples' Savings Bank.

Ourand v. Ourand. Same as to defendant John M. Riggs and reference to auditor.

Brown v. Brown. Reference to auditor ordered.  
Bailey v. Bond and Bond v. Bond. Auditor's report confirmed and causes consolidated.

MARCH 24, 1883.

Ramsay v. Lieb. Auditor's report ratified.  
Kennedy v. Stewart. Amendment to bill granted.

Slimms v. King. Trustee's commission fixed.  
In re Douglas H. Cooper. Sarah M. MacDonald appointed committee.

MARCH 26, 1883.

Bigelow v. Mason. Restraining order granted and appearance of absent defendant ordered.

Chandler v. Phillips. Trustee appointed to release.

Grimes v. Smith. Bid accepted and sale ratified nisi.

Moore v. Moore. Trustees authorized to receive payments before maturity.

Gallant v. Gallant. Sale ratified and reference ordered.

Anderson v. Howgate. Party allowed to sue out attachment against trustee.

Lightfoot v. Britt. Auditor's report confirmed.

James v. Gannon. Reference to auditor ordered.

Chase v. Chase. Hamann allowed to intervene.

Jones v. Stewart. Restraining order granted.

MARCH 27, 1883.

Worthington v. Randall. Guardian ad litem appointed.

Ware v. Ware. Testimony ordered taken.

Boston v. Lewis. Decree pro confesso against certain defendants.

Mason v. Bryan. Depositions allowed to be used before auditor.

Sonnenschmidt v. Fugitt. Trustee appointed under the will.

Cain v. Cooke. Same.

Oertley v. Oertley. Guardian ad litem appointed.

MARCH 28, 1883.

Ward v. Ward. Auditor's report confirmed.

Smith v. Smith. Return of depositions ordered.

Sage v. Campbell. Trustee authorized to receive cash.

Brown v. Brown. Trustee appointed to execute note.

Davidson v. Prall. Appointment of guardian ad litem ordered.

Young v. Gale. Sale confirmed and referred to auditor.

MARCH 29, 1883.

Hilton v. Devlin. Leave to file bill of review.

Smith v. Burch et al. Decree pro confesso as to one of the defendants.

Looney v. Quill. Sales confirmed and referred to auditor.

Payne v. Payne. Sale ordered and trustees appointed to sell.

Schroth v. Miller. Same.

## The Courts.

### IN EQUITY.—New Suits.

MARCH 24, 1883.

8500. Douglas H. Cooper, upon petition of Sarah M. MacDonald, alleged lunatic. Com. sol., R. Fendall.

MARCH 26, 1883.

8501. Jonathan G. Bigelow v. John A. Mason et al. Com. sol., F. P. B. Sands.

8502. James Jones v. William A. Stewart et al. To cancel deed. Com. sol., H. B. Moulton.

8503. Charles T. Davis v. Columbus Thomas et al. Injunction and account. Com. sol., R. K. Elliot.

MARCH 28, 1883.

8504. Mary E. McCarthy v. Bridget O'Hagan et al. For new trustee. Com. sol., D. O. Callaghan.

MARCH 29, 1883.

8505. Benjamin S. Hilton v. John Devlin et al. Bill of review. Com. sol., F. P. B. Sands.

8506. Louis Schmidt v. Lewis C. Schultz et al. Judgment. Creditor's bill. Com. sol., J. St. O. Brooks.

8507. Elizabeth Mahoney v. John H. Mahoney. For divorce. Com. sol., B. A. Lockwood.

MARCH 30, 1883.

8508. Alice P. Read v. George B. Read. For divorce. Com. sol., J. Ambler Smith.

### CIRCUIT COURT.—New Suits at Law.

MARCH 22, 1883.

24350. James M. Gregory v. Henry A. Broon. Account, \$109.24. Pliffs attys, Crittenden & Mackey.

24351. J. W. Magwusson & Co v. Fred. W. Helbig et al. Note and ex., \$161.40. Pliffs attys, Ross & Dean.

24352. Baxter & Bird v. John W. Wetherall. Account, \$143.32. Pliffs atty, Birney & Birney.

24353. David Mottelaud v. A. L. Barber & Co. Note, \$1,000. Pliffs attys, Birney & Birney.

MARCH 23, 1883.

24354. Bates, Reed & Cooley v. Henry King, jr. Account, \$672.05. Pliffs atty, L. Tobiner.

24355. The United States v. William A. Saylor et al. Bond, \$5,000. Pliffs atty, Geo. B. Corkhill.

24356. Charles D. Gilmore v. Alonso R. Miller. Account, \$1,141.60. Pliffs atty, S. R. Bond.

24357. Samuel Dailey v. The Dist. of Columbia. Damages, \$5,000. Pliffs atty, H. H. Moulton.

24358. Abraham & Mayer v. Algemon A. Mabson. Account, \$250. Pliffs atty, F. P.

MARCH 24, 1883.

24359. Robert R. White v. Patrick F. Boyle. Account, \$2.90. Pliffs atty, John E. McNally.

24360. Dennis Purvis v. Leonard Mackall. Account, \$100. Pliffs atty, E. P. Jackson.

MARCH 26, 1883.

24361. Barbour & Hamilton v. Jacob F. Oake et al. Note, \$375. Pliffs atty, L. O. Williamson.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of March, 1883.

JONATHAN G. BIGELOW

v.

JOHN A. MASON ET AL.

No. 8,501. Eq. Dec. 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, his solicitor, it is ordered that the defendants, John A. Mason and Bettie E. Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A true copy.

W. S. COX, Justice.  
R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of March, 1883.

JENNIE CASTINE

v.

WILLIAM CASTINE.

No. 8,479. Equity Docket 23.

On motion of the plaintiff, by Mr. Pelham, her solicitor, it is ordered that the defendant, William Castine, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A true copy.

WALTER S. COX, Justice.  
R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

EDWARD TEMPLE ET AL. }  
v. } 7767. Equity Doc. 21.  
CHARLES WORTHINGTON ET AL. }

On consideration of the report of Charles D. Fowler, trustee in this cause, of the sale of lot numbered nine (9) in square numbered nine hundred and sixty-eight (968) to Mrs. E. L. Putnam for the sum of nine hundred and seventy-five dollars (\$975) cash, it is, by the court, this 30th day of March, A. D., 1883: Ordered that said sale be and the same hereby be ratified and confirmed unless cause to the contrary thereof be shown on or before the 30th day of April next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of April, 1883.

By the Court. MAC ARTHUR, Justice.  
A true copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

SOPHIA GRIMES ET AL. }  
v. } No. 7,806. Equity Doc. 21.  
H. C. SMITH ET AL. }

Upon consideration of the report of A. B. Duvall, trustee, filed this day, it is by the court, this 26th day of March, A. D. 1883: Ordered, that said trustee be and is hereby authorized to accept the offer of five hundred and fifty dollars cash, made by Edward Temple for the purchase of right, title and interest of the parties to this cause in and to the real estate in the proceedings mentioned. And it is further ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of April, 1883. Provided a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter:

By the Court. W. S. COX, Justice.  
A true copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 24, 1883.**

In the matter of the Estate of Robert B. Wagner, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles W. Smiley.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: [13-3] H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 9, 1883.**

In the matter of the Will of Louisa Joachim, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Michael Joachim.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
FRANKLIN H. MACKRY, Solicitor for Petitioner. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of March, 1883.**

MAY E. FITZ GERALD }  
v. } No. 8490. Fd. Doc. 23.  
ALEXANDER FITZ GERALD. }

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Alexander Fitz Gerald, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 12-3 R. J. MEIGS, Clerk, &c.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of March, 1883.**

JAMES M. GREGORY }  
v. } No. 24,350. At Law.  
HENRY A. BROWN. }

On motion of the plaintiff, by Messrs. Crittenden & Mackey, his attorneys, it is ordered that the defendant, Henry A. Brown, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published once a week for three weeks, previous to said rule day.

By the Court. MAC ARTHUR, Justice.  
True copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the matter of the Estate of Rachel W. Birch, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the matter of the Estate of Bushrod Birch, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n., c. t. a., on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n., c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 24, 1883.**

In the matter of the Estate of Mary Duvall, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Duvall.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
WM. A. MELOY, Solicitor. 13-3.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the case of William B. Lord, Executor of Francis B. Lord, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 27th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 13-3 H. J. RAMSDELL, Register of Wills,

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.**

In the case of Frederick Spindler, Administrator of Anna Mary Haberman, alias Mary Haberman, alias Maria Haberman, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 20th day of April A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
CONWAY ROBINSON, Jr., Solicitor. 12-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. March 21, 1883.**

In the case of Thomas J. Myers, Executor of Fanny M. Sutherland, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 20th day of April A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 12-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.**

In the matter of the Estate of Loyal Cowles, late of the District of Columbia, deceased.  
Application for Letters of Administration on the estate of the said deceased has this day been made by Israel L. Townsend.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CRITTENDEN & MACKAY, Solicitors. 12-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

THOMAS LUCAS } No. 8473. In Equity.

JOHN JOHNSON ET AL. }  
On motion of the plaintiffs by Mr. B. F. Leighton their solicitor, it is, this 21st day of March, A. D. 1883 ordered that the defendants, John Johnson, Martha R. Johnson alias Martha R. Sewell, and "the unknown heirs of John Sewell and John G. Sewell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 12-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ELIZABETH A. MOORE ET AL. } Equity 8,192. Docket 18.

MARY E. HARRISON ET AL. }  
Upon consideration, and upon it appearing to the court that James G. Payne and Edward H. Thomas, trustees, have sold lot 6 of the subdivision of part of square 468, made and recorded by the heirs of William Whetcroft, deceased, to Henry Kraak, at and for the sum of \$12,050. Under the terms of the decrees of this court it is this 21st day of March, A. D. 1883, ordered, that the said sale be finally ratified and confirmed on the 21st day of April next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter.

By the Court. WALTER S. COX, Justice.  
True copy. Test: 12-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jourdan W. Maury, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of March, 1883.

SARAH MARIA MAURY, Executrix.  
WM. A. MAURY, Solicitor. 10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration d. b. n., on the personal estate of Michael Shiner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of February, 1883.

10-3 PETER P. LITTLE, Administrator d. b. n.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph O. Fearson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of March, 1883.

WILLIAM H. FEARSON.  
ANSON S. TAYLOR, Solicitor. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

MARY POWER } No. 7,704. Equity.

MARY A. J. POWER ET AL. }  
Job Barnard, trustee herein, having reported a sale of lot number four (4), and the west ten feet front of lot number three (3), in Davidson's sub-division of lots one (1) and ten (10), in square number three hundred and thirteen (313), in Washington City, in the District of Columbia, to Sarah Green, for \$3,598.30.

It is, this 8th day of March, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.  
EDWARDS & BARNARD, Solicitors. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. March 6, 1883.**

In the case of Nathan A. O. Smith, Administrator of Chauncey Smith, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 30th day of March A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue; are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
WM. B. WEBB, Solicitor. 10-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of March, 1883.**

EDWARD L. PALMER ET AL. } No. 8443. Eq. Doc. 22.

HENRY C. BOWERS ET AL. }  
On motion of the plaintiffs, by Mr. McPherson, their solicitor, it is ordered that the defendant, Theodore Van Heusen, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

True copy. Test: R. J. MEIGS, Clerk.  
R. W. MCPHERSON, Solicitor. 10-3

## Legal Notice.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 9th day of March, 1883.JENNIE K. STICKNEY, Adm'r.  
vs.  
Plaintiff,

No. 24,283. At Law.

EDWARD M. STICKNEY, Defendant.

On motion of the plaintiff, by Mr. Selden, her attorney, and it appearing to the court, that a summons for the defendant has been duly issued and returned "Not to be found," it is, this 9th day of March, 1883, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty day after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
A true copy. Test: 11-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.

In the matter of the Estate of S. Louisa Yeabower, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by Samuel Maddox and Randall Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.

In the matter of the Estate of Moses Ogle, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Samuel R. Bond.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CATHERINE SHUGRUE ET AL.

No. 777. Eq. Doc.

DANIEL FOGARTY.

The petition of Ellen Walsh, in the above-entitled cause, for a rule upon Christopher Ingle, requiring him to appear on a day certain and show cause why he should not pay to the petitioner the sum of \$17.12, being before the court, and it appearing to the court that the said Ingle is beyond the jurisdiction of the court, it is, this 13th day of March, 1883, ordered, that the said Christopher Ingle, appear before this court on the 13th day of April, 1883, and show cause why the said sum of \$17.12, should not be paid to the petitioner. Provided, this order be published three times in the Washington Law Reporter before said date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 11-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court Business. March 16, 1883.

In the matter of the Will of Caroline A. Dolbear, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Stillman F. Dolbear.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Duval, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

JOHN E. CHAPPELL, Administrator.  
WM. D. CASSIN, Solicitor. 11-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

REBECCA ROSENBERG

No. 8,483. In Equity.

ALBERT D. ROSENBERG,

On motion of petitioner, Rebecca Rosenberg, by C. M. Matthews, her solicitor, it is by the court this 9th day of March, 1883, ordered, that the defendant, Albert D. Rosenberg, do cause his appearance to be entered in this cause at or before the first special term of the court occurring forty days after this date, otherwise it will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 11-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emeline Carter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1883.

DORSEY E. W. CARTER, Executor.  
H. O. CLAUGHTON, Solicitor 11-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry Helmsen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

HENRY H. HELMSEN, Administrator.  
WM. T. BAILEY, Solicitor. 11-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of March, 1883.

RENE FRANK FOSTER, Petitioner

No. 7118. Eq. Doc. 20.

ELLA FOSTER, Respondent.

On motion of the petitioner, by Messrs. Riddle, Davis & Padgett, his solicitors, it is ordered that the respondent, Ella Foster, cause her appearance to be entered to the amended and supplemental petition herein on or before the first rule-day occurring forty days after publication of this order; otherwise the cause will be proceeded with as in case of default.

By the Court. D. K. CARTER, Justice.  
True copy. Test: 11-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. March 14, 1883.

In the matter of the Estate of John Keefe, late of the District of Columbia, deceased.

Application for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Bridget Keefe, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
P. B. STILSON, Solicitor. 11-3

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sterling T. Austin, late of Lake Providence, Louisiana, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1883.

FLORINE A. AUSTIN, Administratrix.

SHELLBARGER & WILSON, Solicitors.

12-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Franz Waldecker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

JOSEPHINE WALDECKER, Executrix

**THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter McGrath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

DANIEL HANNAN, Executor.

JNO F. ENNIS, Solicitor.

12-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Markriter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883

FREDERICK M. DETWEILER, Executor.

HENRY WISE (ARNETT), Solicitor.

12-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Daniel A. Connolly, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1883.

COLUMBUS J. ESLIN, Adm'r

A. A. LIPSCOMB, Solicitor.

12-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883**

In the case of Thomas J. Myers, Executor of Francis E. Boyle, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 30th day of April A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: [12-3] H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the matter of the Will of Stephen J. Dallas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eda A. Dallas.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.

C. MAURICE SMITH, Solicitor.

11-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 9, 1883.**

In the case of William E. Duhamel, Administrator of John P. Sherburne, late of San Francisco, Cal., deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 10-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Thursday the 8th day of March, 1883.**

MARY E. SROUD, Plaintiff, } No. 8490. Eq. Dec. 22.

HARRY R. SROUD, Defendant. }  
On motion of the plaintiff, by Mr. Jno P. Anderson, her attorney, it is ordered that the defendant, Harry R. Sroud, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

CHAS. P. JAMES, Justice.

True copy. Test: 10-3 R. J. MILES, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, March 6, 1883.**

JOSEPH SYKES } No. 8476. Equity.

MARY ANN SYKES. }  
On motion of the petitioner, by O. S. Bundy, his solicitor it is ordered that the defendant, Mary Ann Sykes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test: 10-3 R. J. MILES, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHASE } No. 8144. In Equity.

W. K. Duhamel, the trustee, having reported a sale of parts of lots 9 and 10, in square 426, being the south part of lot 9, fronting twenty (20) feet on Seventh street, and running the same width, the depth of the lot sixty-six (66) feet and eight (8) inches; and the northern two-and-a-half (2½) inches of lot 10, commencing at the southeast corner of lot 9, and running south two-and-a-half (2½) inches, thence west with a line parallel to the south line of lot 9, being a strip of ground two-and-a-half (2½) inches, fronting on Seventh street and of the same depth as lot 9, to Richard O. Lewis, for \$4,010.

And also, a sale of part of lot 6, in square 341, beginning at a point on the line of Eleventh street, west, 134 feet 7 inches from the northwest angle of the square and running due south twenty-five (25) feet, due east one hundred (100) feet, thence due north twenty-five (25) feet, thence due west one hundred (100) feet to the place of beginning, to William F. Free, for \$2,510 cash. It is, this eighth day of March, 1883, by the court, ordered that the said several sales be and the same are her-by ratified and confirmed unless cause contrary be shown on or before the ninth day of April, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. 10-3 Test: R. J. MILES, Clerk.



# Washington Law Reporter

WASHINGTON - - - - - April 7, 1888.

GEORGE B. CORKHILL - - - EDITOR

THE Supreme Court of California, through Morrison, J., who delivered its opinion, had occasion recently, in the case of the People v. Tamkin (10 Pacific Coast Law Journal, 26), to announce and to apply to the particular facts of that case several well-settled principles in the law of homicide, and among them that insulting language was no excuse for a deadly assault.

While the exposition of the law is clear, there seems to be little that is new in the way of adjudication in the opinion that would render it of value generally as a precedent; the little that is new has, however, a special importance to Truckee, the inhabitants of which bellicose California town are informed, doubtless much to their surprise, that they cannot claim exemption from and form no exception to the operation of the general rule.

One inhabitant of Truckee, McClelland by name, meets another on the street and remarks to him, "I suppose you are as well heeled as you were last night;" to which Tamkin responded, "I am not heeled;" whereupon, McClelland chivalrously says, "Go and heel yourself, for I am fixed;" other remarks were made by McClelland reflecting upon the ancestry of Tamkin coupled with the declaration that he, McClelland, could lick him, Tamkin, at any place in the world; that he, McClelland, did not want to take advantage of him, Tamkin, and for him, Tamkin, "to go and heel himself." McClelland turned to go, and when about fifteen feet from Tamkin, the latter drew a pistol from his pocket and said, "Yes, I am heeled, you ———," and fired; McClelland stooped and drew his pistol, staggered and fired, and other shots were exchanged; the first shot, however, inflicted a wound upon McClelland from which he died.

The indictment of Tamkin followed, and upon the trial witnesses were asked in behalf of the defence if such language as that used

by McClelland was not considered "fighting language in Truckee," and Truckee wondered that an objection to its competency should be sustained by the court.

The appellate court has, however, affirmed this act of the court below, and laid it squarely down as a proposition of law, that "insulting language is no excuse for a deadly assault, and that is so even at Truckee." The free and easy civilization of that town has evidently received a severe set-back.

IN THE criminal code of California there is a provision requiring the jury, when the defendant is found guilty, to state in their verdict the amount of fine and the punishment to be inflicted, and under indictments for murder, it is competent, under the same code, for the jury, where the defendant is found guilty of murder in the first degree, to fix the punishment at imprisonment for life. Hong Ah Duck, being on trial for murder in that State, the prosecution offered to show, that the defendant, at the time of committing the offence, was a convict under a life sentence, for the purpose of giving the jury to understand that if they found the defendant guilty of murder in the first degree, and fixed his punishment at imprisonment for life, it would be no-addition to the punishment to which he was already condemned under his former conviction: the testimony was admitted, the defendant was convicted, and the jury failing to fix the punishment, the sentence of death was passed by the court. The Supreme Court of the State held that the evidence was properly admitted by the court below, and that in considering the question of the nature or extent of the punishment, the jury was fairly entitled to all the latitude which the courts have rightly exercised in hearing evidence tending to enlighten them in the exercise of a sound judicial discretion, in proportioning punishment to the nature of the offence. The question involved was new, and there was no direct authority upon it, the nearest approach to it being the cases of *Fields v. State*, 47 Ala., 603, and *Kistler v. State*, 54 Ind., 400, cited in the opinion.



## Supreme Court District of Columbia

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

H. CLAY STEWART vs. EDWARD G. ELLIOTT.

AT LAW. No. 23,306.

*In the Matter of the Issues from the Probate Court under the Will of Jared L. Elliott.*

{ Decided March—, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and COX sitting.

1. An appeal lies to the General Term from the rulings of the court in special term during the trial of issues from the Orphans' Court, involving the execution of a will and the competency of the testator. Affirming *Coughlin v. Poulson*, 2 Mac A., 206.
2. Where an appeal is taken from the action of the court below overruling a motion for a new trial, on the ground of the insufficiency of the evidence, or because the damages are excessive, the statute (Secs. 805-6 R. S. D. C.) requires the settling of "a case" containing all the testimony, and such a case is presented when the record contains the certificate of the trial justice that it embodies all the evidence produced on both sides at the trial. Affirming the decision upon this point in *Dant v. District of Columbia*, 3 Mac A., 273.
3. The exceptions to the rulings of the court need not be made the subject of separate bills but may be embodied in the "case" certified by the trial justice.
4. The rule of the common law that the granting or refusal of a motion for a new trial is a matter resting in the discretion of the justice trying the case and cannot be the ground of a writ of error or appeal, has been affected by the Revised Statutes of the District only so far as to give the right of appeal in three cases, viz., where the motion has been urged upon *exceptions*, or for *insufficient evidence*, or for *excessive damages*. The General Term, has, therefore, no power to interfere with a verdict on the ground that it was contrary to the evidence, or against the weight of the evidence, or because it is inconsistent or uncertain.
5. It is the *legal sufficiency* of the evidence which the statute refers to when giving an appeal upon the ground of "insufficient evidence," and evidence is legally sufficient where it is of such a character and volume that it may well satisfy a reasonable mind of the truth of the position it is introduced to maintain, in which case it must be submitted to the jury, who are the exclusive judges of its sufficiency *in fact*, and their finding cannot be interfered with by the General Term.
6. The degree of mental capacity, which must be possessed by the testator in order to make his will valid, is no more nor less than that which is requisite in the case of a deed or contract.
7. Undue influence and importunity sufficient to invalidate a will may be exercised without the existence of fraud.

THE CASE is sufficiently stated in the opinion.

COOK & COLE for caveator.

J. J. JOHNSON and WM. F. MATTINGLY for caveatee.

Mr. Justice HAGNER delivered the opinion of the court.

Henry Clay Stewart, as the sole executor, and residuary legatee, propounded for probate in the Orphans' Court of this District, an instrument of writing which he claimed was the last will and testament of Rev. Jared L. Elliott. Edmund G. Elliott, the next of kin and nephew of the deceased interposed a caveat to the probate of the instrument so propounded, and the court passed an order directing the five following issues to be tried by a jury in the circuit court.

First. Whether the said paper writing purporting to be the last will and testament of the said Jared L. Elliott, bearing date on the 15th day of April, 1881, was executed and attested in due form of law.

Second. Whether the contents of said paper writing were read to or by the said Jared L. Elliott at or before the alleged execution thereof by him.

Third. Whether the said Jared L. Elliott, at the time of the alleged execution of said paper writing, was of sound and disposing mind, and capable of executing a valid deed or contract.

Fourth. Whether the said paper writing was executed by the said Jared L. Elliott, under the influence of suggestions, importunities and undue persuasion of the said Henry Clay Stewart, or any other person or persons, when his mind, from its disordered, diseased and enfeebled state, was unable to resist the same.

Fifth. Whether the execution of said paper writing was procured by the fraud, misrepresentations or undue influence or persuasion of the said Henry Clay Stewart, or any other person or persons, acting of their own volition or under the direction of the said Henry Clay Stewart.

The case was there elaborately tried; the court granted the instructions presented on behalf of the caveatee, Stewart, and six of those presented by the caveator, which were severally excepted to by Stewart at the time, and delivered its charge to the jury, which rendered its verdict as follows:

Upon the first issue, *yes*.

Upon the second, third and fourth issues, *no*.

Upon the fifth issue, *yes, except as to fraud*. The caveatee thereupon made a motion which was entered upon the minutes of the trial justice "to set aside said verdict and

grant a new trial upon exceptions and for insufficient evidence."

The reasons assigned in support of the motion were as follows:

*First.* That the evidence adduced in said trial was insufficient for said verdict.

*Second.* Because said verdict was contrary to law.

*Third.* Because it was contrary to the instructions of the court.

*Fourth.* Because it is contrary to the evidence.

*Fifth.* Because it is against the weight of the evidence.

*Sixth.* Because it is inconsistent.

*Seventh.* Because it is uncertain.

*Eighth.* And also upon exceptions taken by said Stewart, severally, to the rulings of the court during the progress of the trial, and to each of the prayers granted to the said caveator."

The justice overruled the motion, and from his decision the caveatee appealed to the General Term.

In this court several questions of practice have been very fully argued touching the regularity of the appeal, and the extent of our authority in examining the case. These points involve the proper construction of the act of Congress of March 3, 1863, which one would naturally suppose had been definitely settled during the intervening twenty years since its enactment. But we have concluded, in view of the alleged uncertainties as to the questions, to examine them anew and express our opinion with respect to them in unequivocal terms.

1st. It is contended that no appeal lies to the General Term from rulings of the trial justice during the trial of issues from the *Orphans' Court* involving the execution of a will and the competency, &c., of the testator.

It is true the trial of such issues is an exceptional proceeding, allowed only by a statute which authorizes no appeal, but seems rather to forbid it; from the terms in which it requires the verdict to be certified to the *Orphans' Court* for its guidance. It is also true that no appeal was allowed in such cases in Maryland until the passage of the act of assembly of 1852; and that the Supreme Court of the United States refused to entertain an appeal from such rulings of the former Circuit Court of this District. (*Van Ness v. Van Ness*, 6 Howard, 62); and, also, from like rulings from this court as now constituted (*Wiley v. Brown*, 4 Wall., 65.)

But we all are nevertheless of the opinion that an appeal does lie to the General Term, in such cases, under the terms of the organic act; and that the decision in *Couglan v. Pail-*

son, 2 Mac Arthur, 208, announces the correct doctrine on the subject.

2d. It is insisted by the caveator, that the record presents no "case" within the meaning of the statute, secs. 803-6, R. S. D. C.

Sec. 805 declares that where an appeal is taken from the decision below on a motion for a new trial, "a bill of exceptions or case shall be settled in the usual manner."

Notwithstanding some intimations to the contrary in one or more cases in our reports, we are of the opinion that the statute does not require the preparation of "the statement of facts," or "agreed case," spoken of by the books of practice; but, in the language of this court in *Dant v. District of Columbia*, 3 Mac Arthur, 273, "a case containing all the testimony is the proper practice when the motion for a new trial is founded upon its insufficiency, or where the damages are excessive. In no other mode can the legal effect of the evidence produced at the trial be determined in a review of the verdict."

In the cause before us, the record contains the certificate of the judge that it embodies all the evidence adduced on both sides at the trial; and it therefore presents the case contemplated by the statute.

3d. The caveator insists that the record contains no bill of exceptions as required by the statute, and, hence, that we are not at liberty to examine the questions of law intended to be presented for our consideration.

The record shows plainly that the caveatee excepted to the granting of each of the six instructions asked by the caveator, which were given by the court; but the objection is that there is no separate bill of exception signed by the judge, and that the statute is not complied with where they are merely embodied in the case certified by the trial justice.

We are of opinion that the objection is not well taken, and that there was no necessity for any more formal presentation of the alleged errors. And this we intended should be explicitly settled by the decision in *O'Neil v. The District of Columbia*, Wash. Law Rep., Vol. 7, No. 32, p. 332.

The construction by the New York courts of the similar provision in their statute is thus announced in *Brown v. Irish*, 12 How. Prac. Rep., 481: "If questions of law and fact arise during the trial, and the party desires a review upon both, he may incorporate his exceptions in his case, stating them separately from the facts."

4th. It has been earnestly contended on behalf of the caveatee, that the General Term upon this appeal is not confined to the right to reverse where it finds the verdict below was ren-

dered upon "*insufficient evidence*," but that it is our duty equally to award a new trial, if upon an examination of the evidence we should be of the opinion that the verdict was "against the evidence" or "against the weight of the evidence;" or, to carry the contention to its legitimate result, as expressed in one of the cases relied on, that we are authorized "to set aside the verdict and grant a new trial, where the court, from the evidence, reaches different conclusions of fact from those found by the jury."

In support of this position we have been referred to many decisions in the State of New York, which it is claimed are especially entitled to consideration in this jurisdiction, as the construction by the courts of that State of the laws from which the provisions of our Revised Statutes on this subject are derived.

Sections 803 to 806 of our Revised Statutes are substantially copied from Sections 264 and 265 of the New York Code of Procedure of 1851-2, although there are many verbal departures from the text of the original, and some important changes, as for example, the provision in the New York law that "a motion for a new trial on a case or exceptions, &c., must in the first instance be heard and decided at a *Special Term*, (except that when exceptions are taken, the judge trying the cause may at the trial direct them to be heard in the first instance at the General Term)," is changed in Section 806 Rev. Stat., so as to require the motions to be heard in this District always at the General Term in the first instance.

It will be found that many of the cases referred to by the caveatee's counsel are addressed to the question of the power of the trial court to grant new trials in cases where the verdict appeared to be against the evidence, or the weight of the evidence.

It had been contended (as in 24 How. Prac., 211, *Allgro v. Duncan*), that the adoption of the Code of Procedure had limited the power of the trial justice in granting new trials to the causes *enumerated* in Section 264 of that Code. But the trial justice in that case, while commenting upon what he styles the awkward phraseology of the section, declares, that as it was the clear and plain course under the old practice to grant a new trial, as well where the verdict was *against the evidence* as where it was rendered upon *insufficient evidence*, he would not give a more restricted construction to his powers because of the peculiar phraseology of the section. "A safe rule, in such cases," said the judge, "is to apply the former practice and to interpret the obscurities and deficiencies of the code by its light."

The doubts expressed by the profession

upon the point seem to have been considered by the revisors as sufficiently important to be noticed in the subsequent Code of Civil Procedure of 1876-7, and Section 264 of the former code was so amended when it appeared as Section 999 of the new volume as to authorize the trial justice to award a new trial not only for "excessive" but also for "insufficient damages;" and as well where the verdict was "contrary to the evidence or contrary to the law," as where it had been rendered upon "*insufficient evidence*;" and the annotator of the new code remarks that "the amendment relieves difficulties experienced" in several cases which he refers to, among which is 24 Howard, 210.

But no such difficulties ever existed in this jurisdiction with respect to the power of the trial justice in granting a new trial, and the section 804 Rev. Stat. was never supposed to have limited the range of reasons for which the new trial might be granted by the judge who heard the cause.

The only purpose of the enumeration in the section was to designate the cases in which an appeal might be taken to the General Term from the order of the trial justice refusing a new trial; and this enumeration constituted an effective limitation of the right of appeal to the three cases mentioned, viz., where the motion had been urged, either "*upon exceptions*, or *for insufficient evidence*, or *for excessive damages*." In no other case was an appeal to be allowed.

The other decisions cited from the New York reports to establish that the General Term or the Court of Appeals of that State possess a wider range of review on motions for new trial than the enumerated cases, are quite consistent with the theory upon which those courts had determined to construe the Code of Procedure, namely, in conformity with the previous well established practice in that State. Their General Term had exercised that appellate authority without question before the enactment of the code, and it was not to be assumed that the jurisdiction was to be taken from that court in the absence of express words of denial.

But in the District of Columbia the case was widely different when the Revised Statutes were adopted. It had been settled, time out of mind, in Maryland, that the granting or refusal of a new trial was matter resting in the discretion of the court, and could not be the ground for a writ of error or appeal.

From the circuit court, as organized before the establishment of the present court, appeals could only be taken to the Supreme Court of the United States: and that court had uni-

formly refused to entertain appeals from the decisions of the circuit court granting or refusing a new trial.

This well settled practice existing here when the act of March 3, 1863, was passed, should only be considered as changed by that act to the extent clearly indicated by its terms; and no latitude of construction can be allowed in the interpretation of a statute framed in derogation of common law principles. As was said by the court in the case in 24 Howard, 211, *Allgro v. Duncan*, before referred to, it is a safe rule to apply the former practice and interpret the obscurities and deficiencies of the code by the light of that practice.

In aid of this construction of the section it is important to note that by Rule No. 60 of this court, where different reasons upon which a motion for a new trial may be made in the court below are specified, it is expressly stated that the decision, where the motion is based upon the allegation that "the verdict is contrary to the evidence," is addressed to the discretion of the court, and is not appealable. Although the rule could not, of course, deprive the suitor of the right if it had been conferred by the statute, its declaration in entitled to great weight in favor of our construction of the statute.

There is not the slightest desire upon our part to circumscribe the methods by which, according to the long established practice in this jurisdiction, the losing party may apply in the trial court for a new trial. The courts of justice would lose much of their value unless this mode of redress against unjust verdicts was tenaciously preserved by the judge, to be applied in his discretion, where he believed the jury have done manifest injustice by returning a verdict against the weight of the evidence.

We are only considering the extent of our authority in cases where application is made to us to review the decision of the trial justice on such motion; and notwithstanding some intimations to the contrary in some of the prior rulings of this court we have concluded, after careful review of the subject in all its bearings that the phrase "for *insufficient* evidence," cannot be construed as authorizing the General Term to consider whether a verdict below was "contrary to the evidence," or "against the weight of the evidence."

By a loose use of language, it may be said that a verdict "*contrary to the evidence*" or "*against the weight of evidence*" was rendered upon "*insufficient* evidence;" and on the other hand, that a verdict upon insufficient evidence, is one contrary to or against the weight of evidence.

But we are dealing with legal expressions in their technical meaning; and it is familiar to all lawyers that evidence offered to a jury in a cause has a two-fold sufficiency, i. e., sufficiency in law and sufficiency in fact; that of its sufficiency *in law*, the court is the exclusive judge; its sufficiency *in fact* is a question exclusively for the jury. The court in considering the legal sufficiency of the evidence to sustain the case of a suitor or to establish any particular fact essential to his recovery, must examine the proof with respect to its quality and quantity; and this determination by the court is a question of law. And if the court can see that the proof offered is of such a character and volume that it might well satisfy a rational mind of the truth of the position it is introduced to maintain, then it is declared to be *legally sufficient* for the purpose; and it must be submitted to the jury who are the exclusive judges of its sufficiency *in fact*, whether others may differ from them in their conclusions or not. As expressed in a recent decision in Maryland, following numerous familiar cases, "if no evidence is offered, or if it is not such as one in reason and fairness could find from it the fact sought to be established, the court ought not to submit the finding of such fact to the jury." *Griffith v. Diffenderfer*, 50 Md.

To the same effect is the language in 40 N. Y. Sup. Ct., 181, *Halpin v. R. R. Co.*, "if there is no conflict, the sufficiency is no longer a question of fact, but becomes a question of law, to be determined by the court."

It is to this *legal sufficiency* that the statute refers, when it authorizes the appeal to this court, and to that inquiry alone have we the right to address an examination.

5th. With this view of the duty devolved upon us, we have carefully examined the evidence in the record, with the suggestive comments of the excellent brief on behalf of the caveatee, and without consuming time unnecessarily in a detailed statement of our opinion upon its different features, it is enough to say that we find ourselves unable to discover from the record that the verdict was rendered upon insufficient evidence.

In arriving at this conclusion, we have been obliged to bear in mind the well settled canons of law on the subject; that the verdict must be presumed to be right, and should be sustained, if the evidence by fair construction will warrant the finding; that the fact that the trial judge is satisfied with the verdict is a circumstance entitled to great weight; that in any case the court must be satisfied that there are strong probable grounds to suppose the verdict was not according to the justice and truth of the case before it will grant a new

trial; and that it will not be granted where the court can see that real and substantial justice has been done; that where the verdict may have been reasonably influenced by questions fairly presented as to the *credibility* of the witnesses, the decision of the jury should be disturbed with great caution, if at all; and that our entire system of jurisprudence is based upon the axiomatic principle, "*ad questionem facti, non respondent iudices.*"

The following extract from Waterman on New Trials, is full of instruction and warning on the point:

"The presiding judge has heard, and what is more important has *seen* the witnesses testify; noticed their demeanor; listened to their cross-examination. Minute circumstances, which are often the turning point in a case have not escaped him. The evidence has been presented full and fresh to his mind, after being passed through the severe ordeal of judicial scrutiny. He has had the benefit of the siftings of counsel. On the other hand, the appellate court has enjoyed none of these advantages. It receives the testimony on paper, and thus presented, it is always tame, meagre and unsatisfactory. Its whole knowledge of the case being thus derived, it is but illy qualified to pass an enlightened judgment upon it. The reasons, therefore, for denying to the appellate court the right to reverse the decision of the judge who tried the cause confirming the verdict, possess great weight. It is certain this right should never be exercised except in extreme cases. That the court below deems the verdict not contrary to the evidence is a very strong presumption that it is correct. The credibility of witnesses, depending as it often does, upon their tone of voice and manner of testifying, can seldom be judged of by an appellate court; on the contrary, when the evidence is spread out on paper, it is quite likely that undue weight will be given to that which is of doubtful veracity, and a verdict which is the result of a careful rejection of what is unworthy of belief, be overthrown from misconception of the true ground upon which it is based." 3 Waterman, 1213.

6th. There remains to consider the sufficiency of the exceptions to the rulings of the court below in granting the prayers of the caveator.

The court by granting the nine prayers of the caveatee had placed his case before the jury in the most favorable light claimed by himself, and he had no fault to find with the language of the charge, which was certainly most impartial.

Was there such error in either of the six

instructions complained of granted to the caveator, as worked a substantial injustice to the caveatee?

The first instruction granted on behalf of the caveator was in these words:

"Unless the jury believe from the evidence that the contents of the paper writing, propounded as the last will and testament of Jared L. Elliott, were read to him, and that he fully understood and comprehended the same, and that he signed and declared it to be his last will and testament, and that he was at the time of sound and disposing mind and memory, and capable of executing a valid deed or contract, they should find it not to be such."

It is objected that it is faulty: 1st. Because it required the jury to find that the will was read to the testator, although he might otherwise have understood its contents; 2nd. Because it required the jury to find that he formally *declared* the instrument to be his will; and, 3rd. Because it required the jury to find that the testator was of sound and disposing "*memory.*"

Neither of these objections is well founded.

1st. It clearly appears he did not read the will, and it must therefore have been read to him, or he could not have comprehended or understood it. And unless he could comprehend it when it was read to him, it certainly could not be a valid will. And this is all the prayer required should be made to appear. Some form of declaration by the testator that the paper was his will was necessary, and the court in its charge explained what would be a sufficient declaration, as follows:

"If he understood the scheme of his will, if he dictated it or *assented to it*, that would be sufficient."

The instruction placed no weightier burden upon the caveatee than he had announced himself willing to assume, as is shown by the proof. See Evidence of Dr. Norris, pp. 14, 15.

3d. The words "and memory" were certainly superfluous. The statute, while discarding the idea that a less degree of mental capacity would suffice for the validity of a will than was requisite in the case of a deed or contract, equally dispenses with any greater mental ability. It suggests a test which a jury might readily apply to the case in hand, by reflecting whether, if the instrument had been a contract or a conveyance, transferring part or all the property of the testator, for an inadequate consideration, they could under the proof decide that the claimant was justified in dealing with the dying man under the existing circumstances.

If the words thus inserted implied require-

ment different from or additional to the statutory measure of capacity, their insertion would certainly have been error.

But it is evidently a mere redundancy of expression, giving another definition of the word "mind," derived from the same root or source, and incapable of misleading the jury; in view especially of the caveatee's instructions and the charge of the judge.

Indeed, all the criticisms upon the instructions excepted to have reference to a similar use of superfluous definitions, adopted into this case from others whose peculiar features may have called for particular forms of expression neither requisite nor altogether proper here.

If in the record of each case, as it is tried, are to be incorporated such copious extracts from all prominent cases preceding it, the occasions of criticism and liability to error will increase in each succeeding trial, with the confusion of the jury and the labor of the court.

One of the errors insisted on, especially in connection with the finding in the fifth issue, is, that the jury was allowed to consider the question of undue influence as existing *apart from fraud*. In this we see no error. In the language of the Court of Appeals, in *Davis v. Calvert*, 5 G. & J., 269; "importunity and undue influence may be fraudulently exerted but they are not inseparably connected with fraud."

A testator may entertain an unreasonable and unjust prejudice against one nearly connected with him, as a daughter who has married against his will, or a son who has offended him by neglecting his advice in a matter in which a child is not necessarily obliged to yield his convictions. In such a case, undue influence may be exerted by an interested person simply by the mention of the undoubted facts of the case; and that, too, under the guise of remonstrance against leaving a smaller portion to the object of the testator's displeasure. The suggestion itself may suffice to rouse the sleeping hostility and result in the disinheritance of the child in favor of the suggestor. And yet it would be difficult to find, in the proof of these facts, evidence sufficiently strong to the apprehension of a jury to induce them to denounce as *fraudulent* the influence thus exerted. What the character of that undue influence must be which would be required to vitiate a will, is well expressed in the caveatee's instructions as referred to before and in the charge of the judge, and we see nothing in the rather general principles announced in the instructions complained of that could have worked injustice to the caveator.

The remaining objection is taken to the sup-

posed inconsistency of the finding. If the verdict to be certified back with the issues was really so inconsistent that the Orphans' Court would be at a loss to know how to enter its judgment, of course it would be error, which the circuit court below should have corrected. For the objection that a verdict was "uncertain" is one of those designated in the Rule 60 as not appealable.

But we can see no inconsistency in the verdict. A paper may be "executed and attested according to law," and yet be invalid for mental incompetency or because of fraud or undue influence. See *Pegg v. Warford*, 4 Md., 395-6.

For these reasons, we affirm the judgment below.

## United States Supreme Court.

No. 202.—OCTOBER TERM, 1882.

TONY PACE, Plaintiff in Error,

v.

THE STATE OF ALABAMA.

*In Error to the Supreme Court of Alabama.*

Section 4184 of the Code of Alabama provides that "if any man and woman live together in adultery and fornication, each of them" shall be liable to a specified punishment. Section 4189 of the same code provides a greater punishment "if any white person and any negro intermarry or live in adultery or fornication with each other." *Held*, That the discrimination here is against the offense and not against the person, and the latter statute is not invalid under the Fourteenth Amendment to the Federal Constitution.

### STATEMENT.

Section 4184 of the Code of Alabama provides that "if any man and woman live together in adultery or fornication, each of them must, on the first conviction of the offense, be fined not less than one hundred dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months. On the second conviction for the offense, with the same person, the offender must be fined not less than three hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not more than twelve months; and for a third or any subsequent conviction with the same person, must be imprisoned in the penitentiary or sentenced to hard labor for the county for two years."

Section 4,189 of the same code declares that "if any white person and any negro, or the descendant of any negro to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry or live in adultery or fornication with

each other, each of them must, on conviction, be imprisoned in the penitentiary or sentenced to hard labor for the county for not less than two nor more than seven years."

In November, 1881, the plaintiff in error, Tony Pace, a negro man, and Mary J. Cox, a white woman, were indicted under section 4,189, in a circuit court of Alabama, for living together in a state of adultery or fornication, and were tried, convicted, and sentenced, each to two years imprisonment in the State penitentiary. On appeal to the Supreme Court of the State the judgment was affirmed, and he brought the case here on writ of error, insisting that the act under which he was indicted and convicted is in conflict with the concluding clause of the first section of the Fourteenth Amendment of the Constitution, which declares that no State shall "deny to any person the equal protection of the laws."

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The counsel of the plaintiff in error compares sections 4184 and 4189 of the Code of Alabama, and assuming that the latter relates to the same offense as the former, and prescribes a greater punishment for it, because one of the parties is a negro, or of negro descent, claims that a discrimination is made against the colored person in the punishment designated, which conflicts with the clause of the Fourteenth Amendment prohibiting a State from denying to any person within its jurisdiction the equal protection of the laws.

The counsel is undoubtedly correct in his view of the purpose of the clause of the amendment in question, that it was to prevent hostile and discriminating State legislation against any person or class of persons. Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offense, to any greater or different punishment. Such was the view of Congress in the re-enactment of the Civil Rights Act, after the adoption of the amendment. That act, after providing that all persons within the jurisdiction of the United States shall have the same right, in every State and territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, declares that they shall be subject "to like punishment, pains, penalties, taxes, licenses,

and exactions of every kind and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding," (16 Stats., ch. 114, sec. 16.)

The defect in the argument of counsel consists in his assumption that any discrimination is made by the laws of Alabama in the punishment provided for the offense for which the plaintiff in error was indicted when committed by a person of the African race and when committed by a white person. The two sections of the code cited are entirely consistent. The one prescribes, generally, a punishment for an offense committed between persons of different sexes; the other prescribes a punishment for an offense which can only be committed where the two sexes are of different races. There is in neither section any discrimination against either race. Section 4184 equally includes the offense when the persons of the two sexes are both white and when they are both black. Section 4189 applies the same punishment to both offenders, the white and the black. Indeed, the offense against which this latter section is aimed cannot be committed without involving the persons of both races in the same punishment. Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same.

Judgment affirmed.

#### Executors or Trustees.

A question frequently arises in these days as to whether an executor is also a testamentary trustee, and it is a question on which the books throw a broken light. It is, however, frequently a point of much importance to executors and their counsel, as well as one affecting sometimes substantial interests of beneficiaries.

The origin as well as the obscurity of the question has naturally resulted from the changes which the law of wills has undergone.

Traces of the former usage to regard the executor as owner of the assets are shown in the law as settled in the early years of the judicial decisions and statutes of our States, to the effect that, although the executor was at last recognized as holding not in his own right, but in *autre droit*, yet he was liable for debts, &c., unless he should plead and prove insufficiency of assets to pay them; and his office as executor was for a long time regarded as an interest in the estate which would be affected by his serving as an attesting witness.



The law is now, however, fully converted to the view that the executor holds in a purely fiduciary capacity; and if he have no right of inheritance or succession, and no beneficial interest under the will, he has no personal interest in the estate. He must keep the funds separate and intact, like a trustee, must not use them for his own advantage, cannot even pay himself in advance of other creditors and without sanction a debt due him from the testator, and is liable for embezzlement as is a trustee. A considerable part of the litigation in courts of administration consists in applying the equitable rules of responsibility under which other trustees stand to executors and administrators; and it is not, therefore, strange that there should appear to be an anomaly in debating whether the will creates a trust or not. But the trust which a will may create, and the trust which the law affixes to the office of every executor are quite different legal conceptions.

Formerly, when it was desired in drawing a will to provide for a fund being set apart, and permanently held under sanctions of responsibility more stringent than those then imposed on executors, it was necessary to create an express trust, and was usual to designate as trustees other persons than those appointed as executors. As the fiduciary responsibility of executors became more clearly established, it became usual to appoint the same persons trustees and executors; and now, probably, so firmly fixed is the general idea that an executor takes in trust, a large proportion of wills intended to create a trust are drawn without any clear indication of an intent to meet the formerly well settled distinctions on this point. This distinction is still of practical importance, however, in several respects. In the first place, if a distinct trust be created and the executor named as trustee, he may accept the one office and decline the other.

Still more important, sometimes, is the question of new appointment arising on the death of a sole surviving executor or trustee. The surrogate has exclusive jurisdiction to appoint an administrator with the will annexed, who is the successor of an executor, but the administrator with the will annexed has no distinct powers or title as a testamentary trustee, even if such powers or title be created by the will. The Supreme Court may, if an action be pending, appoint a receiver of the estate; but whether he would have the power of a trustee is still another question.

In the case of a testamentary trustee, however, the surrogate has a concurrent power

of appointment as to real estate, and perhaps also, notwithstanding the recent act of 1882 as to trusts, a concurrent as to personality.

Another distinction which causes frequent controversy is between, on the one hand, the powers of each of several co-executors to bind the estate (1 Wend., 583; 28 N. Y., 226; 9 Cow., 34), and the statute rule that the executor first served in an action shall answer for the estate (*Salters v. Pruyn*, 15 Abb. Pr., 224; Code Civil Pro., sec. 1817); and on the other hand the rule that co-trustees must act together.

Still another distinction (now without much if any importance in this State) regards the stricter rule of duty and liability for care and diligence, which is imposed in some jurisdictions on trustees as compared with mere executors. (84 N. Y., 339, rev'g 22 Hun., 270.)

A question of some interest is also presented by the statute declaring the interest of a beneficiary in a trust to a certain degree inalienable and exempt from the reach of creditors. (See *Williams v. Thorn*, 70 N. Y., 270; 81 Id., 381.)

Several other results of this distinction enhance its practical importance and the need of attention to it by the draftsmen of the wills.

The effect of the provisions of the new Code of Civil Procedure and the act of 1882 (and that of the proposed Civil Code, if it shall be adopted) we have yet to see as developed in the course of judicial decision.—*N. Y. Daily Register*.

#### Negligence—Injury to Passenger—Pleading.

In an action against a railroad company to recover damages for injuries received while traveling as a passenger the plaintiff is not bound to state in his declaration the particular facts constituting the negligence. It is sufficient to declare generally that the injury was the result of the defendant's negligence.

Plaintiff, who was injured while traveling as a passenger on the cars of the defendant company, alleged in his declaration, that the injuries were caused by the derailment of the train resulting from negligence on the part of the defendant but did not state in what the negligence consisted. On a motion to make the declaration more specific: *Held*, That while in a suit by an employee of the company for damages for personal injuries it might be necessary to specify in the complaint the facts constituting the negligence, there is a material difference between a suit by an employee and a suit by a passenger, for personal injury. The latter has, as a general thing, no means of knowing what has caused the accident or injury. He has nothing to do with



the operation of the road. He may be only one of a thousand passengers occupying many coaches. He may be so seriously injured as to be unable to inquire into the causes of the accident. He may be killed and suit may be brought by his representatives. Many reasons suggest themselves at once why it would be a harsh rule to require a passenger who sues for an injury to specify the acts of negligence or the facts showing want of care on the part of the railroad company. It is accordingly settled by reason and authority that it is sufficient to state in the declaration generally that the injury was the result of defendant's negligence. When it comes to trial the burden is upon the plaintiff to show a *prima facie* case. See Thompson on Carriers, sec. 9, p. 574, and the cases therein cited. *Clark v. The Chicago, Burlington & Quincy Railroad Company*. U. S. Circuit Court, S. D. Iowa, January, 1883.

## Land Department.

Furnished by SICKELS & RANDALL.

Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

### SHONBAR LODE.

Lode claim located entirely within the limits of a patented placer claim. Lode located for nearly the full width allowed by the law. It is alleged that the lode was known to exist long before the filing of the application for the placer patent. No adverse claim was filed by the lode claimants against the application for placer patent.

*Held*, That having failed to file an adverse claim, the lode claimants are restricted by the statute to their lode "and twenty-five feet of surface on each side thereof."

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, March 26, 1883.

*The Commissioner of the General Land Office:*

SIR: I have considered the appeal of Anthony H. Barret et al., applicants for patent for the Shonbar lode, from your decisions of March 28 and June 3, 1882, the former holding their Helena, Montana, Mineral Entry, No. 611 of the premises for cancellation, and the latter declining to recall the former.

You held the entry for cancellation because the ground covered thereby had been previously patented as placer claims upon mineral entries numbered 575 and 553, per patents issued April 15 and May 16, 1881, respectively.

It appears that said applicants located their claim May 5, 1879, filed application for patent November 2, 1880, notice whereof was regularly published from November 5, to January 6, 1881, whereupon they made Mineral Entry, No. 611, January 14, 1881. Their application calls for "1497 linear feet of the Shonbar

vein, lode or deposit, bearing silver and other metals, together with surface ground varying from 464 to 538 feet in width, . . . being situated in the Summit Valley Mining District, county of Deer Lodge, territory of Montana." Such claim is designated as "Lot No. 175," containing an area of 17.19 acres, and is so delineated by the official survey thereof made by United States Deputy Mineral Surveyor Baker, June 26, 1880, plat whereof was approved by United States Surveyor-General Mason September 3d ensuing. These applicants claim to have acquired title "by purchase from original locators."

It further appears that, under date of May 29, 1882, the applicants' attorney filed in their behalf the affidavits of certain persons resident in said district, alleging that the Shonbar lode is a well-defined vein, rich in minerals, and that its existence was known at and long anterior to the date of said placer application.

Wherefore said attorney requested that your former decision be recalled and that patent issue for the Shonbar lode claim; but by your decision of June 3, 1882, you declined to recall your former decision, holding the matter to be beyond the jurisdiction of your office.

This case, so far as relates to the question of the existence of a known lode, is within the rule established by this Department under date of the 19th instant, in the matter of the Mammoth Quartz Mine, wherein it was ordered that the lode claimants be permitted to proceed pursuant to statutory provisions by application for patent upon the lode claim, by regular publication, subject to the filing of an adverse claim and the institution of suit in a court of competent jurisdiction.

But the present claim exceeds twenty-five feet in width on each side of the vein. The application has been allowed, publication regularly had and the entry made. In fact, said claimants had completed their proofs, and the same were matter of record in your office for several months prior to the issuance of the placer patents, and no adverse claim was filed. It would not be practicable, therefore, at this stage of the cause, to remit these claimants to the performance, *de novo*, of such preliminary requirements. In the absence of an adverse claim they are entitled to take their lode and twenty-five feet on either side. The only question remaining is whether or not the excess over that width of surface ground can be allowed.

I think this cannot be done. The lode claimants, in order to protect their right to the full extent of their claim, should have filed adversely to the placer application within the statutory period, but having failed so to

do, they are expressly restricted by the statute to their lode, "and twenty-five feet of surface on each side thereof."

Your decision is accordingly reversed; and if, on examination, the proofs are found regular and sufficient, you will require a corrected plat, properly defining the restricted surface ground, upon which patent will issue.

Very respectfully,

H. M. TELLER,  
Secretary.

## The Courts.

### U. S. Supreme Court Proceedings.

MARCH 30, 1883.

The following gentlemen were admitted to practice during the past week:

Eugene Otterbourg, of New York City; Richard W. Parker, of Newark, N. J.; Henry H. Giffry, of Salem, Oregon; M. M. Devine, of New York City; Francis Rawle, of Philadelphia, Penn.; John C. Gray, of Boston, Mass.; Albert G. McDonald and David C. Vancott, of Brooklyn, N. Y.; Julius B. Bissel, of Leadville, Col.; Riley J. Bliss, of Kingman, Kansas.

No. 1232. Francis M. Long et ux. v. Daniel Bullard. Motion for supersedeas submitted.

No. 218. C. F. Hampton, adm'r, et al. v. J. L. Phipps. Argued and submitted.

No. 219. The Western Pacific R. R. Co. et al. v. The United States. Same.

No. 293. The United States v. Joseph U. Fisher. Same.

No. 1237. The United States v. Charles Mitchell. Same.

No. 222. Emanuel Halen v. The United States. Same.

No. 187. Mrs. Peter Duff et al. v. The Sterling Pump Co. From C. C. U. S., N. D. of Ill. / Decree affirmed. Opinion by Mr. Justice Blatchford.

No. 190. Ludloff Brothers v. The United States. To C. C. U. S., D. of Md. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 195. The Memphis & Charleston R. R. Co. v. The State of Alabama, use of Jackson County. From C. C. U. S., N. D. of Ala. Decree affirmed. Opinion by Mr. Justice Gray.

No. 198. The Mayor, &c., of the City of Savannah v. Eugene Kelly, and

No. 199. The Mayor, &c., of the City of Savannah v. A. M. Martin. To C. C. U. S., S. D. of Georgia. Judgments affirmed. Opinion by Mr. Justice Matthews.

Nos. 406 and 407. The United States v. James H. Britton. On certificate of division in opinion of C. C. U. S., E. D. Missouri. Questions answered. Opinion by Mr. Justice Woods.

Nos. 409, 410 and 411. The United States v. James H. Britton and Barton Bates. On certificate of division in opinion of C. C. U. S., E. D. of Missouri. Questions answered. Opinion by Mr. Justice Woods.

No. 197. Jonathan Kirkbride v. Lafayette County. To C. C. U. S., W. D. of Missouri. Judgment reversed, and cause remanded. Opinion by Mr. Justice Harlan.

No. 174. The St. Paul & Chicago R. R. Co. v. Samuel McLean. To C. C. U. S., S. D. of N. Y. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 66. The Manhattan Medicine Co. v. Nathan Wood et al. From C. C. U. S., D. of Maine. Decree affirmed. Opinion by Mr. Justice Field.

No. 1041. Charles F. Kring v. The State of Missouri. To S. C. of Missouri. Judgment reversed and cause remanded. Opinion by Mr. Justice Miller.

No. 185. Edgar A. Baldwin et al. v. F. G. Starks. To S. C. of Nebraska. Decree reversed and cause remanded. Opinion by Mr. Justice Miller.

No. 179. The Memphis & Charleston R. R. Co. v. The United States. To C. C. U. S., W. D. of Tennessee. Judgment reversed and cause remanded. Opinion by Mr. Chief-Justice Waite.

No. 10. Original. Ex parte E. E. Morton. Writ of mandamus awarded. Opinion by Mr. Chief-Justice Waite.

No. 1232. F. L. Long et ux. v. Daniel Bullard. Motion for supersedeas denied. Announced by Mr. Chief-Justice Waite.

No. 1241. The State National Bank of Springfield v. The St. Louis Rail-Fastening Co. To C. C. U. S., S. D. of Ill. On motion dismissed with costs.

No. 12. Original. Ex parte State of Iowa. On motion. Leave granted to file petition of mandamus.

No. 11. Original. Ex parte Hung Hang. Petition for writ of habeas corpus submitted.

No. 223. Allen v. McVeigh. Submitted.

No. 224. Gross v. The U. S. Mortgage Co. Same.

No. 225. Boro v. The County of Phillips. Same.

No. 226. Farlow v. Kelly. Same.

No. 227. Wright v. The U. S. Same.

APRIL 3, 1883.

No. 50. B. G. Bean v. The U. S. To C. C. U. S., D. of New Jersey. On motion dismissed.

No. 202. The B. & P. R. Co. v. The Fifth Baptist Church. Submitted.

No. 222. The P. & N. Y. S. S. Co. v. The Hill Manf. Co. Same.

APRIL 4, 1883.

No. 203. The Conn. Mut. Life Ins. Co. v. Leopold Luchs. Argued and submitted.

No. 229. Patrick G. Meath v. Phillips County. Same.

No. 230. Charles E. Lewis v. The City of Shreveport. Same.

No. 231. Thomas J. Wood v. The United States.

APRIL 5, 1883.

No. 232. Geo. W. Campbell et al. v. The United States. Argued and submitted.

No. 234. John H. Rountree v. E. F. Smith et al. Same.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

E. E. Downham & Co. v. Ellen Kelly et al. Motion to dismiss decree because not a final decree, overruled.

MARCH 30, 1883.

E. E. Downham & Co. v. Ellen Kelly et al. Objection to sale. Argued and submitted.

Henrietta O. Marshal v. Mollie M. Main et al. Motion to dismiss submitted.

The U. S., ex rel. Ward B. Burnett, v. Henry

M. Teller, Secretary, &c. Account of district attorney for fees for services approved.

Benjamin U. Keyser, receiver, &c., v. George Brettharth, adm'r, &c. Motion to dismiss overruled.

#### CRIMINAL COURT.—Justice Wyllie.

MARCH 26, 1883.

U. S. v. John W. Dorsey et al.

W. F. Kellogg was cross-examined by the counsel for the government. Page, James Gamble, and E. W. Hill testified for the defense. John W. Dorsey, one of the defendants, was admitted to testify, notwithstanding the objections of the counsel for the government.

MARCH 28, 1883.

John W. Dorsey continued to testify for the defense.

MARCH 29, 1883.

John W. Dorsey was cross-examined by the prosecution.

MARCH 30, 1883.

Cross-examination was continued on the part of the prosecution.

APRIL 2, 1883.

The cross-examination of the defendant Dorsey was continued. Mr. Kersey testified for the defense.

APRIL 3, 1883.

The cross-examination of the defendant Dorsey was concluded.

APRIL 4, 1883.

Harvey M. Valle, one of the defendants, testified in his own behalf, and was cross-examined by the prosecution.

APRIL 5, 1883.

The cross-examination of Harvey M. Valle was concluded, and another of the defendants, John W. Dorsey, testified for the defense.

#### CRIMINAL COURT NO. 2.—Justice Hagner.

MARCH 21, 1883.

U. S. v. Vigo Jansen Ross. Information for grave robbing. Verdict guilty.

MARCH 22, 1883.

U. S. v. John W. Gersback. Information for assault. Verdict not guilty.

U. S. v. Andrew Smith. Information for assault. Verdict not guilty.

U. S. v. James H. Hicks. Information petit larceny. Verdict not guilty.

U. S. v. Alfred Cannon. Information petit larceny. Nolle pros.

MARCH 26, 1883.

U. S. v. V. Jensen Ross. Motion to suspend sentence and arrest of Judgment.

MARCH 27, 1883.

U. S. v. Joseph Harbaur. Receiving stolen property. Verdict guilty.

MARCH 28, 1883.

U. S. v. Wm. Jones. House breaking. Verdict guilty.

U. S. v. Augustus Draney. Information for assault. Verdict not guilty.

## The Courts.

### IN EQUITY.—New Suits.

MARCH 30, 1883.

8509. Henry E. Burgess v. Elizabeth Burgess. For divorce. Com. sol., H. O. Olagett.

APRIL 3, 1883.

8510. Jessie S. Hersey et al v. Edward E. Hersey et al. For divorce. Com. sol., John E. Norris.

APRIL 4, 1883.

8511. E. B. Hay et al v. George E. Kirk et al. To correct error in description of deed. Com. sol., E. B. Hay.

APRIL 5, 1883.

8512. Henson Eustich v. Makir Eustich. For divorce. Com. sol., H. T. Wiswall.

### CIRCUIT COURT.—New Suits at Law.

MARCH 26, 1883.

24363. Edward L. Palmer & Co. v. James Melville T. Martin. Account, \$95.12. Plffs atty, R. W. McPherson.

MARCH 27, 1883.

24363. Henry Kengla v. Mary A. Lawler. Sub-contractor's lien, \$202. Plffs atty, L. Tobriner.  
24364. Barbour & Hamilton v. Julius W. Folsom. Notes, \$247.62. Plffs attys, Carusi & Miller.

MARCH 28, 1883.

24365. Hooe Bro. & Co. v. Rosier W. Welch. Note, \$114.03. Plffs attys, Bradley & Davall.  
24366. Charlier Forbenson v. W. A. W. Clark. Certiorari. Defts atty, W. S. Perry.

MARCH 29, 1883.

24367. J. B. Bryan & Bro. v. Margaret Maliba. Judgment of Justice Taylor, \$45.10.

MARCH 30, 1883.

24368. J. M. Dove v. Alys Gorter. Judgment of Justice Taylor, \$61.26. Plffs attys, Claughton & Claughton.

MARCH 30, 1883.

24369. Robert Hare Powell & Co. v. Samuel P. Brown et al. On judgment, \$1039.43. Plffs attys, Appleby & Edmonston.

MARCH 31, 1883.

24370. The Northern Liberty Market Co. v. John H. Glick & Son. Account, \$320. Plffs atty, J. J. Darlington.  
24371. John Caldwell v. Oscar E. Huss. Note and account, \$508. Plffs atty, Heylman & Kane.

APRIL 2, 1883.

24372. Peter L. Hoagland v. George W. Utarmehle. Certiorari. Deft atty, J. McD. Carrington.

APRIL 3, 1883.

24373. Louis Bagger & Co v. Ransom G. Baldwin. Judgment of Justice Hall, \$99. Plffs atty, J. H. Smith.  
24374. Alonzo J. Eaton v. The Great Falls Ice Co. Damages, \$3,000. Plffs atty, Wm. E. Earle.  
24375. Charles H. Knight v. Harriet A. Adler. Replevin. Plffs atty, F. E. Alexander.

APRIL 4, 1883.

24376. Henry C. Swain v. Wm. C. Murdock. Note, \$600. Plffs atty, W. A. McKenney.

APRIL 5, 1883.

24377. John C. Hachtel & Co. v. Samuel L. Davis. For judgment, \$360.99. Plffs attys, Miller and Forrest.

24378. George C. Henning v. Arthur B. Cropley. Appeal. Deft attys, Gordon & Gordon.

24379. John W. Ross v. Wash. Nallor. Replevin. Plffs attys, Ross & Dean.

24380. Singleton & Hoeke v. Margaret V. Walker. Judgment of Justice Mills, \$48.85. Plffs attys, Claughton & Claughton.

APRIL 6, 1883.

24381. J. A. Errico & Co. v. Guesseppl Marinello. Notes and account, \$564.81. Plffs atty, E. E. Pairo.

### PROBATE COURT.—Justice James.

MARCH 17, 1883.

Estate of Franz Waldecker; executrix bonded and qualified.

Estate of Clara B. Brooks Hall; will filed and proved.

MARCH 19, 1883.

Estate of Clara B. Brooks Hall; letters granted and administrator bonded.

MARCH 20, 1883.

Estate of Sarah Hammond; proof of publication filed.

Estate of Catharine Brown; caveat to will filed.

Estate of Harriet P. Phlek; decree to collect funds.

Estate of Eliab Kingman; caveat to will filed.

MARCH 21, 1883.

Estate of Hannah C. Wentz; will filed and proved; petition for letters.

Notices to be published to the representatives of the following estates:

Estate of Francis E. Boyle.  
Estate of Anna Mary Haberman.  
Estate of Fanny M. Sutherland.

MARCH 23, 1883.

Estate of Margaret O. Smith; inventory returned by executor.

In re Estate of Hannah O. Wentz. Letters granted and parties bonded.

Will of Elizabeth Decker filed for probate.

Estate of Frank P. Hill; notice of motion filed.

Estate of Caroline A. Dolbear; commissions issued to take depositions of witnesses to will.

Accounts filed:

Estate of Rose Olark Farquhar.

Estate of Charles Gordon.

Estate of Thomas Harper.

Estate of Benjamin L. Jackson.

Estate of Jennet Tucker.

MARCH 24, 1883.

Will of Lewis B. Wynn proved by two witnesses; letters granted.

Estate of Mary Elizabeth Carey; account of executor passed.

Estate of Patrick H. Cooney; administrator appointed and bonded.

Peter P. Little, guardian to Joseph H. Shiner, appointed and bonded.

Will of Mary E. Magruder; administrator w. a. requested to be appointed; will admitted to probate.

Estate of Mary Duvall; order of publication.

Margaret E. Deameed, guardian; petition of minor for account.

Estate of Robert B. Wagner; order of publication.

Estate of Richard Vigle; letters granted; bonded.

Estate of Arsenus T. Harvey; letters granted; bonded.

Estate of Sarah Whitman Parrie; proof of publication filed; commission to take depositions of attesting witnesses.

Estate of Elizabeth Decker; will fully proved; renunciation of one of the executors filed.

In re Oscar P. Schmidt; guardian appointed and bonded.

Estate of Frank P. Hill, Wm. Whiting and Augustus B. Stoughton; accounts filed.

Estate of Thomas Harper; executrix authorized to have bonds transferred to her own name.

Estate of Harriet Park Phisk. Receipts of distributees filed.

Estate of Elizabeth Carey; account of sales by executor; accounts passed; William F. Scala, guardian.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. S. WORTHINGTON ET AL., Trustees, } No. 8192.  
v. } Equity Doc. 22.

O. A. REED, Administrator, et al.

The trustee in this cause having reported the sale of all the interest and estate of which William B. Reed died seized and possessed in original lot 15 and lots 23 and 24 of Bushrod W. Reed's subdivision, all in square 290, for the sum of \$175, cash: it is this 6th day of April, 1883, ordered and decreed that the said sale stand confirmed unless objections thereto be filed on or before the 6th day of May, 1883, provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before the said date.

By the Court. WALTER S. COX, Justice.

A true copy. Test: 14-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 6th day of April, 1883.

WILLIAM LORD, USE OF KIRBY, } No. 8429. Eq. Doc. 22.  
v. }

PATRICK O'DONOGHUE ET AL.

Upon the coming in of the trustees' report of the sales of parts of lot No. 25, in the subdivision of lot 3 in square No. 415, it is this 6th day of April, 1883, ordered, that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of May next: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto. The report shows the sale of the east 25 feet by 100 thereof to W. F. Eaton for \$3,637.50; of the adjoining 25 x 100 feet to L. O. Oresser for \$2,625; of the adjoining 25 x 100 feet to C. T. Heinicke for \$2,425; of the adjoining 25 x 100 feet to Stephen Gatti for \$3,357.50; of the adjoining 25 x 100 feet (with the building thereon) to Lewis Behrens for \$2,500; of the adjoining 25 x 100 feet to J. T. Hawkins for \$2,412.50. The aggregate of said sales are reported to be \$14,957.50.

By the Court. W. S. COX, Justice.

T. JESUP MILLER, Solicitor. 14-3

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 4th day of April, 1883.

ELLET P. RICHARDSON } No. 8,491. Eq. Doc. 22.  
v. }

JAMES P. RICHARDSON.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, James P. Richardson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. W. S. COX, Justice.

True copy. Test: 14-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 3rd day of April, 1883.

LAURA A. RICHARDS } No. 8388. Eq. Doc. 22.  
v. }

SAMUEL RICHARDS.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered, that the defendant, Samuel Richards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice, ac.

A true copy. Test: 14-3 R. J. MEIGS, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 30th day of March, 1883.

ELIZABETH MAHONEY } No. 8,607. Eq. Doc. 22.  
v. }

JOHN HENRY MAHONEY.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.

A true copy. Test: 14-3 R. J. MEIGS, Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hannah O. Wentz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of March, 1883.

JOSEPH M. FARKE,  
BALDUS DE LONG.

C. H. ARMES, Solicitor.

14-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Arsenus T. Harvey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1883.

14-3 ANGELA HARVET, Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. April 6, 1883.

In the case of James S. Edwards and William H. Goods, Administrators c. t. a. of Anthony Buchly, deceased, the Administrators c. t. a. aforesaid have, with the approval of the court, appointed Friday, the 4th day of May, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

14-3 Test: H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lewis B. Wynne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2nd day of April, 1883.

LEWIS B. WYNNE, Jr., Executor.

GEO. A. KIRK, Solicitor.

14-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth Decker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of March, 1883.

GEORGE C. WALKER,  
OSCAR P. SCHMIDT.

WM. H. DENNIS, Solicitor.

14-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of March, 1883.

JOHN E. CHAPPELL, Administrator.

WM. D. CASSIN, Solicitor.

11-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business, March 14, 1883.**

In the matter of the Estate of John Keefe, late of the District of Columbia, deceased.

Application for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Bridget Keefe, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
P. B. STILSON, Solicitor.

11-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 26th day of March, 1883.**

JONATHAN G. BIGELOW

JOHN A. MASON ET AL.

No. 2,601. Eq. Dec. 22.

On motion of the plaintiff, by Mr. F. P. B. Sands, his solicitor, it is ordered that the defendants, John A. Mason and Bettie E. Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 31st day of March, 1883.**

JENNIE CASTINE

WILLIAM CASTINE

No. 2,479. Equity Docket 22.

On motion of the plaintiff, by Mr. Pelham, her solicitor, it is ordered that the defendant, William Castine, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.

A true copy. Test: 13-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sterling T. Austin, late of Lake Providence, Louisiana, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1883.

FLORINE A. AUSTIN, Administratrix.

SHELLBARGER & WILSON, Solicitors.

13-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Franz Waldecker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

JOSEPHINE WALDECKER, Executrix.

12-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter McGrath, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

DANIEL HANNAN, Executor.

JEO F. ENNIS, Solicitor.

12-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Markriter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

FREDERICK M. DETWEILER, Executor.

HENRY WISE GARNETT, Solicitor.

12-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Daniel A. Connolly, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1883.

COLUMBUS J. ESLIN, Adm'r.

A. A. LIPSCOMB, Solicitor.

12-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business, March 9, 1883.**

In the matter of the Will of Stephen J. Dallas, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Eda A. Dallas.

All persons interested are hereby notified to appear in this Court on Friday, the 6th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
O. MAURICE SMITH, Solicitor.

11-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.**

In the case of Frederick Spindler, Administrator of Anna Mary Haberman, alias Mary Haberman, alias Maria Haberman, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 26th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.  
CONWAY ROBINSON, JR., Solicitor. 12-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.**

In the case of Thomas J. Myers, Executor of Fanny M. Sutherland, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 30th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 12-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

THOMAS LUCAS

No. 8473. In Equity.

JOHN JOHNSON ET AL.

On motion of the plaintiffs by Mr. B. F. Leighton their solicitor, it is, this 21st day of March, A. D. 1883, ordered that the defendants, John Johnson, Martha R. Johnson alias Martha B. Sewell, and the unknown heirs of John Sewell and John G. Sewell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 12-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ELIZABETH A. MOORE ET AL.

Equity 6,182. Docket 12.

MARY E. HARRISON ET AL.

Upon consideration, and upon it appearing to the court that James G. Payne and Edward H. Thomas, trustees, have sold lot 6 of the subdivision of part of square 466, made and recorded by the heirs of William Wheteroff, deceased, to Henry Kraak, at and for the sum of \$12,000. Under the terms of the decrees of this court it is this 21st day of March, A. D. 1883, ordered, that the said sale be finally ratified and confirmed on the 21st day of April next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter.

By the Court. WALTER S. COX, Justice.  
True copy. Test: 12-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 21, 1883.**

In the case of Thomas J. Myers, Executor of Francis E. Boyle, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 30th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: [12-3] H. J. RAMSDALL, Register of Wills.

## Legal Notice.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of March, 1883.**

JERAMIAH K. STICKNEY, Adm'r.  
vs. Plaintiff,

No. 24,288. At Law.

EDWARD M. STICKNEY, Defendant.

On motion of the plaintiff, by Mr. Selden, her attorney, and it appearing to the court, that a summons for the defendant has been duly issued and returned "Not to be found," it is, this 9th day of March, 1883, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
A true copy. Test: 11-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.**

In the matter of the Estate of S. Louisa Yeabower, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c. t. a., on the estate of the said deceased has this day been made by Samuel Maddox and Randall Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 18th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 16, 1883.**

In the matter of the Estate of Moses Ogle, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Samuel R. Bond.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of April next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters of Administration on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CATHERINE SHUGRUE ET AL.

No. 777. Eq. Dec.

DANIEL FOGARTY.

The petition of Ellen Walsh, in the above-entitled cause, for a rule upon Christopher Ingle, requiring him to appear on a day certain and show cause why he should not pay to the petitioner the sum of \$17.12, being before the court, and it appearing to the court that the said Ingle is beyond the jurisdiction of the court, it is, this 15th day of March, 1883, ordered, that the said Christopher Ingle, appear before this court on the 15th day of April, 1883, and show cause why the said sum of \$17.12, should not be paid to the petitioner. Provided, this order be published three times in the Washington Law Reporter before said date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 11-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. March 16, 1883.**

In the matter of the Will of Caroline A. Dolbear, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Stillman F. Dolbear.

All persons interested are hereby notified to appear in this court on Friday, the 18th day of April, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 11-3 H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

EDWARD TEMPLE ET AL. }  
v. } 7767. Equity Doc. 21.  
CHARLES WORTHINGTON ET AL. }

On consideration of the report of Charles D. Fowler, trustee in this cause, of the sale of lot numbered nine (9) in square numbered nine hundred and sixty-eight (968) to Mrs. E. L. Putnam for the sum of nine hundred and seventy-five dollars (\$975) cash, it is, by the court, this 30th day of March, A. D. 1883: Ordered, that said sale be and the same hereby is ratified and confirmed unless cause to the contrary thereof be shown on or before the 30th day of April next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of April, 1883.

By the Court. MAC ARTHUR, Justice.  
A true copy. Test: 13-3 B. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

SOPHIA GRIMES ET AL. }  
v. } No. 7,805. Equity Doc. 21.  
H. C. SMITH ET AL. }

Upon consideration of the report of A. B. Duvall, trustee filed this day, it is by the court, this 26th day of March, A. D. 1883: Ordered, that said trustee be and is hereby authorized to accept the offer of five hundred and fifty dollars cash, made by Edward Temple for the purchase of right, title and interest of the parties to this cause in and to the real estate in the proceedings mentioned. And it is further ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of April, 1883. Provided a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter:

By the Court. W. S. COX, Justice.  
A true copy. Test: 13-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 24, 1883.**

In the matter of the Estate of Robert B. Wagner, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Charles W. Smiley.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: [13-3] H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 16, 1883.**

In the matter of the Estate of Loyal Cowles, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Israel L. Townsend.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CRITTENDEN & MACKAY, Solicitors. 12-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of March, 1883.**

MAY E. FITZ GERALD }  
v. } No. 8490. Eq. Doc. 23.  
ALEXANDER FITZ GERALD. }

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Alexander Fitz Gerald, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 12-3 E. J. MEIGS, Clerk, &c.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of March, 1883.**

JAMES M. GREGORY }  
v. } No. 24,350. At Law.  
HENRY A. BROWN. }

On motion of the plaintiff, by Messrs. Crittenden & Mackey, his attorneys, it is ordered that the defendant, Henry A. Brown, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published once a week for three weeks, previous to said rule day.

By the Court. MAC ARTHUR, Justice.  
True copy. Test: 13-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the matter of the Estate of Rachel W. Birch, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the matter of the Estate of Bushrod Birch, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n., c. t. a., on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n., c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 24, 1883.**

In the matter of the Estate of Mary Duvall, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Duvall.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
WM. A. MELOY, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, March 30, 1883.**

In the case of William B. Lord, Executor of Francis B. Lord, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 27th day of April, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 13-3 H. J. RAMSDELL, Register of Wills.



# Washington Law Reporter

WASHINGTON - - - - - April 14, 1883.

GEORGE B. CORKHILL - - - EDITOR

THE Door, Sash and Lumber Company having furnished materials and done certain work on the premises of Crook, took the steps prescribed by the statute to secure a mechanics' lien, and subsequently filed its petition in the Court of Common Pleas of Franklin county, Ohio, to enforce and foreclose the lien. The petition contained allegations to the effect that a promissory note was given in payment of the claim payable to the order of the plaintiff one day after date with interest, that the note was not paid at maturity, and thereupon the plaintiff obtained judgment by confession for the amount of the note. The Supreme Court of the State held that the proceeding to enforce the lien would not lie; that where a promissory note is given and received in payment of a mechanics' lien for materials furnished and work done, in erecting a house under contract with the owner, the lien of the mechanic is waived. (D. S. and L. Co. v. Crook, 9 Cin. Law. Bul., 13.)

## The Alabama Claims.

The clerk of the Court of Commissioners of Alabama Claims has made a partial estimate of the amounts involved in the claims now pending before the court. Twenty-two hundred cases out of 5,700 filed aggregate nearly \$14,000,000 without interest. If judgment were awarded for the amounts claimed in these cases, the interest would probably run the aggregate up to more than \$20,000,000. It will thus be seen that the court will have no difficulty in disposing of the undistributed remainder of the Geneva award, about \$9,500,000.

The court now has under consideration two questions of considerable interest to claimants, namely: First, whether in certain cases awards shall be made upon a gold or currency basis, having reference to the war premiums on gold; and second, what, within the meaning of the act creating the court, is a "Confederate cruiser," and does a privateer without letters of marque from the Confederate government come within the meaning of he act?

# Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

{ Decided Feb. 26, 1883.  
The CHIEF JUSTICE and Justices HAGNER and COX sitting.

CATHERINE TIERNEY

v.

FRANK E. CORBETT and ISRAEL C. O'NEAL

1. Declarations of the vendor or assignor made subsequently to the transfer of property by him are not admissible in evidence for the purpose of impeaching such transfer.
2. Where the vendor took the property to the presence of the vendee, told her it was hers, gave her a bill of sale, and took a dollar apparently to bind the bargain, and the vendee thereupon asked the vendor to retain and take care of the property for her, this is a delivery constructively and symbolically if not actually.
3. Under the Maryland act of 1729, ch. 8, sec. 5, in force in this District, an executor or administrator, as such, cannot assail any transfer of property which would be good against the deceased were he living; any rights which they may have as creditors to impeach the transaction must be pursued by them in that capacity.
4. Form of judgment for plaintiff in an action of detinue.
5. A judgment in detinue if improperly entered, may be reformed by the general term so as to be according to the precedents, without sending the case back for a new trial.

THE CASE is sufficiently stated in the opinion.

T. JESUP MILLER and R. B. LEWIS for plaintiff.

EDWARDS & BARNARD for defendant.

Mr. Justice Cox delivered the opinion of the court:

This was an action rather unusual in form, but yet justified by precedent perhaps, for the wrongful detention by the defendants of certain property belonging to the plaintiff, consisting of horses and a carriage.

The facts relied upon and claimed to have been established by the plaintiff, are, that this was formerly the property of the Spanish Minister at Washington, who, on leaving this country, sold the horses and carriage to his own coachman who afterwards sold it to Edward Strong, and gave him a bill of sale dated the 6th of April, 1879, and on the same day Strong, for the consideration of one dollar, bargained, sold and conveyed to Catherine Tierney, the plaintiff, the same property. It seems that Strong was then engaged to be married to the plaintiff, who was employed as cook in the family of Judge Bartley. In the



language of the plaintiff, who was on the witness stand, it seems that Strong told her that he had bought this property for her; that he went to Judge Bartley's and called her out on the porch and told her it was hers; he delivered to her a bill of sale, and she gave him a dollar and told him to drive the coach and take care of it. After Strong gave the plaintiff the bill of sale, she put it in a trunk and kept it for a long time, and on one occasion she gave it back for a special purpose and never got it back until after Strong's death. Strong gave money to the witness at various times, and after Strong's death the carriage and horses were kept in Judge Bartley's stable.

On the other hand, the defendants claim that Strong retained possession of the property up to the time of his death; that he made a will just before his death, and that if the plaintiff derived any title from him at all, she derived it from this will, and not from the alleged bill of sale or gift, made some time before. That after the execution of this bill of sale, one Crusor obtained a judgment against him before a justice of the peace for forty dollars for feed furnished these same horses, and about six months after Strong's death, the will meanwhile never having been established, or even offered for probate in the orphans' court, Crusor having obtained judgment against Strong, as stated, applied to the court, as a creditor, for letters of administration against Strong's estate, and on those letters took this property out of the possession of Tierney. Having obtained an order from the orphans' court for sale, he took the property to Alexandria and it was there purchased in good faith by the defendants.

The will of Strong is also put in evidence, in which, in general terms, he gives and bequeaths to Catherine Tierney "any and all personal property of whatsoever description that may now be in my possession, or that may hereafter come into the hands of my executor," &c.

The theory of the defense was, that this transaction, on which the plaintiff relies for her title, was not a valid one, and the only title she could derive must be under the will of Strong, and taking it in that way, she must take it in subordination to the claims of creditors; and the will, not having been probated, Crusor, having taken out letters of administration, being a creditor, could pass title to the defendants.

At the trial of the case, on cross-examination of the plaintiff's witness, the defense offered to prove that Strong, while his will was being prepared and signed, stated that the property referred to in that will was the

property referred to in this suit, that is, the horses and carriage. That was excluded, and this was the subject of the first exception. On offering testimony for the defense, it was attempted to be shown that Strong made a declaration at the time he made his will that he was making the will in order to give the horses and carriage to the plaintiff. That was excluded and was the subject of the second exception. So that the first and second exceptions are substantially on the same point, that is, in relation to the exclusion by the court of declarations made by Strong at the time he was making the will, applying the terms of the will to this specific property.

It is said on behalf of the defendant that oral declarations of the testator made before and at the time of the executing of the will, are always admissible for the purpose of identifying the property as between parties claiming under the will—that is different legatees, or legatees and next of kin. We have no occasion to dispute the general proposition that the declarations of the testator are admissible simply for the purpose of settling the identity of property claimed of the decedent. But that is not, really, the purpose for which the declarations were offered here. They are offered here really to show, in substance, a continued assertion of title to this property by Strong up to the time of his death, and indirectly to show title in it at that time, for the purpose of bringing this property under the operation of the will, and therefore in subjection to the claims of creditors. The plaintiff having offered evidence tending in the first instance to show a prior assignment to her, either in the shape of gift or sale, these subsequent declarations of the deceased are offered for the purpose of impeaching his own alleged transfer. In other words, they are offered in derogation of his own act of assignment, whether by gift or sale.

We think it very clear that the *ex parte* declarations of a party made subsequent to an alleged assignment are not to be proved in impeachment of that assignment. Therefore the court was right in excluding this testimony. These exceptions could not be sustained.

The next exception is to an instruction of the court given at the instance of the defendant. The court said, "if the jury believe from the evidence that the right of property in the carriage, horses and harness mentioned in the declaration was transferred by Edward Strong in his lifetime to the plaintiff, Kate Tierney, the personal representative could only succeed to such rights of property as Edward Strong himself had; and taking pos-

session of the said property by the personal representative could not divest the plaintiff of her rights." That was objected to. In other words, if the property was regularly transferred in the lifetime of Strong to the plaintiff, Strong's representatives could not interfere with her title. No ground was stated for the objection to this instruction, and the terms in which it is couched are unobjectionable as a proposition of law. The objection now taken is, that it virtually submitted to the jury the determination of a question of law, that is whether the right or title in the property was transferred by Strong in his lifetime to the plaintiff. This supposed vagueness or defect in the instruction, the defendants' counsel undertook to remedy himself, by asking the court to instruct the jury that the supposed state of facts did not amount to a transfer of property from Strong to the plaintiff. But that instruction contained several distinct propositions, and it is admitted in argument now, it is too broad, and this exception to the refusal to grant it is not insisted on. But the judge below went on to correct the supposed fault in his instructions by charging what facts would amount to a transfer of the property. He said:

"The issue has been much narrowed by the rulings of the court upon the prayers asked by the parties, so that all the jury will have to pass upon is, as to whether there was a sale of the property in controversy by Strong to the plaintiff, so as to transfer the title to the plaintiff during the lifetime of Strong. The property was purchased by Strong with his own funds, and it is claimed that on the same day he bought it, he sold it to the plaintiff for one dollar, and gave her the bill of sale in evidence. . . . Now, it is for you to determine whether a sale of the property from Strong to the plaintiff ever actually took place; and, if so, whether it was a *bona fide* sale. If you find that it did, then she was the owner of the property before Strong died; and whether she actually took possession or not, her ownership gave her the right to possession, and she could have taken possession at any time; and she actually took possession after Strong's death."

This proposition in the charge, taken together with the instruction, amounts simply to this, that if the jury should find a *bona fide* sale from Strong to the plaintiff in his lifetime, then the property was transferred, and, if they so found this transfer of the property, the personal representative of Strong after his death could not interfere with the title. So that, so far as the first instruction was de-

fective in submitting a point of law to the jury, it was corrected by this additional instruction in the charge.

But it is objected that the court should have gone further, and have said to the jury that this was not a case of sale at all, but a case of gift, and was defective as a case of gift by failure to deliver the property, inasmuch as there was no evidence of delivery in this case. The answer to that, in the first place, is, that no exception was taken to this part of the instruction, and it is too late now to make that objection. But in the next place, we think the court would have rightfully refused to give that instruction if it had been asked. The circumstances are that Strong took this carriage to the presence of the plaintiff and told her it was hers, and gave her a bill of sale, and took a dollar, apparently to bind the bargain, and she thereupon asked him to retain it and take care of it for her. Now, if these fact were believed by the jury, it seems to us that they amounted to delivery, constructively and symbolically, if not actually. Between creditors it would be a question of *bona fides*; but on the question of delivery to consummate a gift, it seems to us that we have here the elements of delivery if the facts are to be believed by the jury, and that the court could not be found fault with now for not having instructed the jury to the contrary. We think the objection to the instruction of the court in that it did not declare this to be a gift, and imperfect as wanting in the element of delivery, is not tenable, and that the court cannot be found fault with now for having omitted to give that instruction.

The only other exception relates to an expression at the close of the charge. The court said:

"The bill of sale was not acknowledged and recorded, and the possession of the property was allowed to remain with Strong while he lived; and if he had creditors at the time of the bill of sale, the failure to comply with the law in this respect would have rendered the sale void as to such condition. But it is claimed there were no creditors of Strong at this time, and if that is true, then I instruct you that the failure to acknowledge and record the bill of sale within twenty days, will not render the bill of sale void. It would be valid as between the parties, and in fact as to everybody else, if there were no creditors. There is evidence that Strong owed Crusor for feed for the same horses, but that bill was contracted after the alleged time of the bill of sale to the plaintiff."

To that portion of the instruction which states that the bill of sale would be valid as

between the parties, and, in fact, as to everybody else, if there were no creditors, exception is taken. In the exception, are these words in parenthesis in the language of the court, "the possession remaining in the vendor, and the bill of sale not being acknowledged and recorded in twenty days." In other words, the exception is, if the property remained in possession of the vendor, and the bill of sale was not recorded within twenty days, the court was wrong in saying that it would be valid as between the parties, and, in fact, as to everybody else, if there were no creditors. If these words be taken alone from the charge, they make an unimpeachable proposition of law, because the bill of sale is good as between the parties, and the exception is faulty in not being more specific. I think there probably was a little mistake in the form in which it was taken as presented in the record. It is probable that the court was understood to say that if the possession remained in the vendor, and the bill of sale was not recorded within twenty days, then, under the statute, it would be valid as against *subsequent* creditors. I will assume that to be the proposition; let us see how that affects the case. Supposing that the court ought not to have said that the bill of sale was valid as against *subsequent* creditors while possession was retained and the bill of sale never put on record. Suppose that to be the error. If the proceeding under which these parties derived title had been a proceeding by creditors as such, then it would become a very material question whether the bill of sale was valid as against subsequent creditors or not. But, in point of fact, the proceeding was by administration, and the title is derived entirely through a supposed administration of the estate of Strong. Crusor took possession of the property *qua* administrator, and undertook to sell as such and pass title as administrator, so that the question is, is a bill of sale void as against creditors, void also as against an administrator? Is the latter a representative of creditors? That is a very serious question, and it requires some examination. The act of assembly of 1729, ch. 8, sec. 5, provides that "no goods or chattels, whereof the vendor mortgagor or donor shall remain in possession, shall pass, alter or change, or any property thereof be transferred to any purchaser, mortgagee or donee, unless the same be by writing and acknowledged before one provincial justice, or one justice of the county where such seller, mortgagor or donor shall reside, and be within twenty days recorded in the records of the same county. Nothing in this act shall extend or be construed to extend to make void

any such sale, mortgage or gift against such seller, mortgagor or donor, his executors, administrators or assigns only, or any claiming under him, her or them."

Unquestionably the assignment could not have been disputed by Strong himself in his lifetime, but can it be assailed as void under the act of assembly of 1729 by his administrator? On this question we cannot pursue a safer course than to be guided by the decisions of the Court of Appeals of Maryland, which have been rendered from time to time during fifty years past in the construction of this statute; and they have said emphatically that not only the donor but his personal representative cannot impeach a transaction of that sort, however creditors might assail it. The question immediately suggests itself what remedy has a creditor under these circumstances if the creditor cannot sue the administrator? The court of appeals lay down two courses for the creditor to pursue. In the first place he may sue the fraudulent assignee of the deceased as *executor de son tort*.

And they go further and say that if the personal representative is himself a creditor (which was this case) that does not prevent him from pursuing the property by this same proceeding in the character of creditor, but not as administrator. This very question was decided in 6 Harris & Johnson, 61. In that case a man had made a bill of sale to his own son. The executor, who was also a creditor, took possession of the property, and the son brought an action to recover it, which was sustained.

Here was a case where the donee under this unrecorded assignment was not a defendant taking possession, but was a plaintiff seeking to recover, and the court sustained his title against the executor, and said that the latter, as creditor, had no right to take possession of the property, and as executor he was bound by the act of his testator.

It is followed by other cases unnecessary to refer to in detail. Another remedy suggested is that a creditor may file his bill against the executor and the fraudulent assignee together and have the property applied to debts.

So that we are constrained by the authorities to hold that Crusor, in this case, as administrator, could not interfere with this property, and could not, therefore take possession of it and pass title—and since the only title derived was from him as administrator, the court did no harm to the defendant if it erroneously asserted that the assignment was good as against subsequent creditors.

The only question remaining is in regard

to the form of judgment in the case. The motion by defendants was to correct the entry of judgment by making the same in the alternative, that the defendants return the property or pay the damages assessed, which motion was overruled and the defendants appealed to this court. We must follow precedents in this case, and the precedents show there was an error in the form of this judgment. The form in which a judgment is rendered in this kind of case is found in Harris' Entries, p. 200, as follows:

"The jurors do say that the said D. 'detains from the said P. the within writing obligatory in the declaration aforesaid mentioned in manner and form above specified as the said P. above against him both complained, and they do assess the damages of the said P. for the value of the said writing obligatory to £100 current money, and they do also assess the damages of the said P. by reason of detaining that writing obligatory to £10 current money, therefore it is considered by the court here that the said P. recover against the said D. the aforesaid writing obligatory, if the said P. can have the same delivered to him; and if the said P. cannot have the same delivered, then the aforesaid sum of £100 current money, for the value of the same, and the said £10 current money, for his damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, as also the sum of — to the same P. on his assent adjudged by the court here for his costs and charges by him about his suit in this behalf laid out and expended, and the said D.' &c.

In this case there was an absolute judgment entered for so much money—six hundred dollars. That was a defect. There are two courses open to the court in correcting this error, viz.: one to send the case back for a new trial, which we are reluctant to do, and the other is to reform the judgment, here, and enter it according to precedents.

**AN IMPORTANT DECISION.**—The Supreme Court of the United States has rendered a decision which has been the subject of comment among lawyers in the Executive Departments. The cashier of a national bank in St. Louis, Mo., swore before a notary public that certain returns made to the Comptroller of the Currency were true, while in fact they were false. The cashier was indicted for perjury. He demurred to the indictment on the technical ground that, under the laws of the United States, a notary public is not an officer or person competent to administer such oath. The opinion of the court sustains this demurrer.

## United States Supreme Court.

Nos. 108 and 832.—OCTOBER TERM, 1892.

JOSEPH B. CLOSE AND GEORGE CLENDENIN,  
Appellants,

vs.

THE GLENWOOD CEMETERY.

CHARLES BORCHERLING, Appellant,

vs.

THE GLENWOOD CEMETERY.

*Appeals from the Supreme Court of the District of Columbia.*

A cemetery company was incorporated in 1854 by an act of Congress which authorized it to purchase and hold ninety acres of land in the District of Columbia, and to receive gifts and bequests for the purpose of ornamenting and improving the cemetery; enacted that its affairs should be conducted by a president and three other managers, to be elected annually by the votes of the proprietors, and to have power to lay out and ornament the grounds, to sell or dispose of burial lots, and to make by-laws for the conduct of its affairs and the government of lot-holders and visitors; fixed the amount of the capital stock, to be divided among the proprietors according to their respective interests; and provided that the land dedicated to the purposes of a cemetery should not be subject to taxation of any kind, and no highways should be opened through it, and that it should be lawful for Congress thereafter to alter, amend, modify or repeal the act. Presently afterwards thirty of the ninety acres were laid out as a cemetery, the cemetery was dedicated by public religious services, and a pamphlet was published, containing a copy of the charter, a list of the officers, an account of the proceedings at the dedication, describing the cemetery as "altogether comprising ninety acres, thirty of which are now fully prepared for interments," and the by-laws of the corporation, which declared that all lots should be held in pursuance of the charter. No stock was ever issued. But the owner of the whole tract, named in the charter as one of the original associates, and in the list published in the pamphlet as the president and a manager of the corporation, knowing all the above facts, and never objecting to the appropriation of the property as appearing thereby, for more than twenty years managed the cemetery, sold about two thousand burial lots, and gave to each purchaser a copy of the pamphlet, and a deed of the lot, signed by himself as president, bearing the seal of the corporation, and having the by-laws printed thereon. In 1877 Congress passed an act, amending the charter of the corporation, providing that its property and affairs should be managed, so as to secure the equitable rights of all persons having any vested interest in the cemetery, by a board of five trustees to be elected annually, three by the proprietors of lots owned in good faith upon which a burial had been made, and two by the original proprietors; and that of the gross receipts arising from the future sale of lots one fourth should be annually paid by the trustees to the original proprietors and the rest

be devoted to the improvement and maintenance of the cemetery. *Held*, that the act of 1877 was a constitutional exercise of the power of amendment reserved in the act of 1854; that the owner of the land was estopped to deny the existence of the corporation, the setting apart of the whole ninety acres as a cemetery, and the right of the lot-holders to elect a majority of the trustees; and that he was in equity bound to convey the whole tract to the corporation in fee, and to account to the corporation for three-fourths of the sums received by him from sales of lots since the act of 1877; and the corporation to pay him one fourth of the gross receipts from future sales of lots.

Pending a bill in equity against the owner of land to compel a conveyance of the title, subject to certain rights of his in the rents and profits, a receiver appointed in another suit against him, and to whom he had by order of court in that suit assigned his interest in the land, applied to be [and was] made a defendant, and answered, and also filed a cross-bill against both the original parties, which was afterwards ordered to be stricken from the files, with leave for him to apply for leave to file a cross-bill; but he never applied for such leave. The case was heard upon pleadings and proofs, and a final decree entered ordering the original defendant to convey to the plaintiff, and the plaintiff to account to him or his assigns for part of the rents and profits, and that this decree be without prejudice to the rights of the receiver. *Held*, that the receiver was not aggrieved.

Mr. Justice GRAY delivered the opinion of the Court:

This is a bill in equity, filed on the 25th of October, 1877, by the Glenwood Cemetery, claiming to be a corporation established by act of Congress, against Joseph B. Close, William S. Humphreys, Randolph S. Evans and George Clendenin, praying for a conveyance of the legal title in a tract of land containing ninety acres, situated in the District of Columbia, known as the Glenwood Cemetery; and for an account. The bill was afterwards dismissed by consent as against Humphreys and Evans. The material facts, as shown by the proofs, are as follows:

In June, 1852, Humphreys, for the sum of \$9,000, bought of Junius J. Boyle the tract of land in controversy, and took from him a deed of it, and immediately set about preparing it for use as a cemetery. He enclosed with a high fence, and laid out with drives and walks, and improved and embellished, thirty acres of it, leaving the other sixty acres in their original unimproved condition; and in March, 1853, put Clendenin in charge as superintendent. Humphreys conveyed to Close an undivided half of the premises in April, 1853, and the whole tract in June, 1854. The two deeds were absolute in form, but were, in fact, intended as security; the first for the repayment of \$20,000, advanced to Humphreys by

Close, for the purpose, as Close knew, of converting the estate into a cemetery; and the second for the repayment of other advances to the amount of \$7,000, already made to him by Close, for the same purpose, and of subsequent like advances, of the amount of which there is no evidence but Close's own vague and unsatisfactory testimony, unsupported by books or vouchers; and the parties agreed in writing that if Humphreys should meet his obligations, he should have back one-half of the land. Humphreys thenceforward managed the property, acting for himself and Close, through Clendenin as superintendent, until September, 1859, when, having failed to meet his engagements, he relinquished all his interest in the property to Close, and Close became sole owner, and assumed control of the property, retaining Clendenin as his superintendent to manage the cemetery.

On the 27th of July, 1854, Congress passed an act entitled "An act to incorporate the proprietors of Glenwood Cemetery," by which twelve persons named, eight of them residents of the District of Columbia, and the other four being Close and William Phelps, (since deceased), residents of New Jersey, and Humphreys and Evans, residing in New York, were created a corporation by the name of "The Proprietors of Glenwood Cemetery in the District of Columbia," and were empowered "to purchase and hold not exceeding one hundred acres of land in the District of Columbia, north of the limits of the city of Washington; to sell and dispose of such parts of said land as may not be wanted for the purpose of a cemetery, provided that at least thirty contiguous acres shall be forever appropriated and set apart as a cemetery; with authority to said corporation to receive gifts and bequests for the purpose of ornamenting and improving said cemetery;" and it was enacted that the affairs of the corporation should be conducted by a president and three managers, to be "elected annually by a majority of the votes of the proprietors," and "each proprietor entitled to one vote for each share held by him," and that until the first election the four last-named persons should be managers; that the president and managers should have power, among other things, "to lay out and ornament the grounds," "to lay out and sell or dispose of burial lots," and "to make such by-laws, rules and regulations as they may deem proper for conducting the affairs of the corporation, for the government of lot-holders and visitors to the cemetery, and for the transfer of stock and the evidence thereof;" that "the capital stock of said company shall be represented by two thousand shares of fifty dollars each,

divided among the proprietors according to their respective interests, and transferable in such manner as the by-laws may direct;" that "no streets, lanes, alleys, roads or canals of any sort shall be opened through the property of said corporation, exclusively used and appropriated to the purpose of a cemetery; provided, that nothing herein contained shall authorize said corporation to obstruct any public road or street or lane or alley now actually opened and used as such;" that any person wilfully destroying, injuring or removing any tomb, monument, gravestone, fence, railing, tree or plant within the limits of the cemetery, should be considered guilty of a misdemeanor; that "each of the stockholders in the said company shall be held liable in his or her individual capacity for all the debts and liabilities of the said company, however contracted or incurred;" that "burial lots in said cemetery shall not be subject to the debts of the lot-holders thereof, and the land of the company dedicated to the purposes of a cemetery shall not be subject to taxation of any kind;" that a certificate, under seal of the corporation, of the ownership of any lot, should have the same effect as a conveyance of real estate; and that "it may be lawful for Congress hereafter to alter, amend, modify or repeal the foregoing act." 10 Stat., 789.

On the 2d of August, 1854, the ceremony of dedicating the cemetery by appropriate religious services and addresses was performed on the spot in the presence of a number of people. Immediately afterwards a pamphlet was published and generally circulated, containing a copy of the charter, a list of the officers, including Close, Phelps, Humphreys and Evans, managers, Close, president, Humphreys, treasurer, and Clendenin, superintendent; a full account of the proceedings at the dedication, in which the property was spoken of as set apart and consecrated for the burial of the dead, and as "altogether comprising ninety acres, thirty of which are now fully prepared for interments;" and the by-laws of the cemetery, of which the first was, "All lots shall be held in pursuance of 'An act to incorporate the Proprietors of Glenwood Cemetery,' approved July 27, 1854, and shall be used for the purposes of sepulture alone."

Close soon after received a copy of this pamphlet from Humphreys, and from that time to the filing of the bill never objected to the appropriation of the property in the manner appearing thereby. In the course of the next twenty years, about two thousand lots were sold, and each purchaser was given a copy of the pamphlet, and a certificate or deed of his lot, signed by Close as president, bearing the seal

of the company, and having the by-laws printed thereon. The gross receipts from the time of the opening of the cemetery to 1876 were \$160,000. No stock was ever issued as provided in the charter.

No taxes were ever paid on any part of the ninety acres. At different times from 1871 to 1876, taxes were assessed, or proposed to be assessed, by the municipal authorities, upon the sixty acres which had not been improved. But Close and Clendenin, by representing to the assessors and collector that the whole tract had been dedicated to burial purposes in accordance with the charter, and by exhibiting to them the charter and the pamphlet containing the account of the dedication, induced them to recognize the exemption of the whole tract from taxation.

On the 28th of February, 1877, Congress passed an act, amending the act of the 27th of July, 1854; changing the name of the corporation to "The Glenwood Cemetery;" providing that its property and affairs should be under the control of a board of five trustees, any three of whom should be a quorum, to be elected annually, "three by the proprietors of lots in said cemetery" (each to be "entitled to one vote for each lot owned by him in good faith, upon which a burial has been made") "and two by the original proprietors," and to have authority to fill temporary vacancies in the board; that these trustees should so conduct the affairs of the cemetery "as to secure the equitable rights of each and every person having in any way any vested interest in the said cemetery; and the cemetery shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever;" that "the words 'the proprietors,' where they occur in the original act of incorporation hereby amended, shall be interpreted and construed to mean and shall signify the proprietors of lots in said cemetery, and which is hereby now declared by this amendment to be the true intent and meaning of said words;" and that, of the gross receipts arising "from the sale of lots hereafter sold of the ground now dedicated to burial purposes," one fourth should be annually paid by the trustees to the original proprietors, and the rest be devoted to the improvement and maintenance of the cemetery. 19 Stats., 266.

Pursuant to this act, the owners of lots chose three trustees, who, on the refusal of Close to recognize the corporation as existing, or to appoint two other trustees, filled up the vacancies in the board, and on the refusal of Close, and of Clendenin as his agent, to de-

liver up possession to them, filed this bill to compel a conveyance of the legal title and a delivery of possession of the whole tract, and an account of the proceeds of any lots sold since the organization under the act of 1877.

The defences set up by Close and Clendenin, in their answers and at the argument, are that there never was any acceptance of the act of 1854, or formal organization of the corporation under it, but the property remained the private property of Close, except such lots as had been sold, for which he was ready to give a legal title to the holders; that the act of 1877 was unconstitutional and void, as depriving him of his property without adequate compensation; and that no part of the sixty acres not enclosed was ever dedicated to the purposes of a cemetery in such a way as to interfere with his absolute control over it.

After Close and Clendenin had put in their answers, Charles Borchertling filed a petition to be admitted as a defendant to the bill, alleging that he had been appointed receiver under a decree for alimony rendered in a suit for divorce brought against Close by his wife in the court of chancery of New Jersey, and that in obedience to an order of that court, Close had executed to him as such receiver an assignment of all his personal estate, the rents and profits of his real estate, and "especially the capital stock of the Glenwood Cemetery in Washington in the District of Columbia, and all profits, dividends or other moneys to me coming therefrom, or from any office thereof." This petition of Borchertling was granted, and he filed an answer to the original bill, setting up these facts, he also filed a cross-bill, praying that Close convey the title in the cemetery to the corporation, and that the corporation issue and deliver to Borchertling as receiver as aforesaid stock to the amount of one hundred thousand dollars. On motion of Close and Clendenin, the court afterwards ordered the cross-bill of Borchertling to be stricken from the files, with leave to him to apply for leave to file a cross-bill. He never applied for such leave. But the corporation filed a general replication to the answers of Close, Clendenin and Borchertling, proofs were taken, and the case was heard and decided upon the merits.

By the final decree of the court below, it was adjudged that Close convey the whole tract of ninety acres to the plaintiff corporation in fee simple; that Close and Clendenin deliver to the plaintiff all books, plans, records and personal property, belonging to or used in connection with its business, and be perpetually enjoined from interfering with or obstructing the plaintiff in the possession and

management of the cemetery; and the court being further of opinion that Close was entitled to be compensated for the transfer of his title in the land as the original proprietor thereof, and that the provision made for this object by the act of Congress of 1877 was an equitable adjustment of the rights of Close, and a reasonable compensation for his title and interest in the property, both in amount and in mode of payment, regard being had to the needs of the cemetery, it was further adjudged that the plaintiff annually hereafter account for and pay to him or his assigns one-fourth of the gross receipts from sales to be made of lots in the cemetery; and that an account be taken of his receipts from the cemetery since the act of 1877 took effect, and that he be charged in favor of the plaintiff with all sums, over and above one-fourth of the gross receipts from sales of lots, which had been applied to his own use and not properly disbursed on account of the cemetery, and that he pay the costs of suit; and that this decree be without prejudice to the claims of Borchertling as receiver as aforesaid.

From that decree appeals have been taken and argued by Close and Clendenin and by Borchertling.

The appeal of Borchertling may be briefly disposed of. The order striking his cross-bill from the files reserved leave to him to apply to the court for leave to file a cross-bill. He never made any such application, but, after replication filed to the answers of himself and of the other defendants, suffered proofs to be taken upon the issues so made up, and the case to proceed to a final decree; and the final decree is expressed to be made without prejudice to his rights as receiver. Under these circumstances, there is nothing in the proceedings of the court below prejudicial to those rights, or which entitles him to a reversal of the final decree and to a reopening of the whole case.

Upon the merits of the case, as presented by the appeal of Close and Clendenin, it will be convenient to consider first the question whether assuming that the charter granted by Congress in 1854 must be held to have been duly accepted by the corporation, and the corporation to have been legally organized under it, the act of 1877 is within the power of alteration, amendment and repeal, reserved to Congress in the original charter.

The terms of that charter show that it was not intended to create a mere land company, for the exclusive benefit of the original associates and their successors holding shares in the stock of the corporation; but that the ultimate and principal object was to establish



and permanently maintain a cemetery for the burial of the dead, which, if not a strictly charitable use, is in some aspects a pious and public use, and was evidently so regarded by Congress. If the corporation were to be exclusively a private business corporation, created for the sole benefit of the original associates and their successors as holders of shares, Congress would hardly have inserted in the charter the provision authorizing the corporation to receive gifts and bequests for the purpose of ornamenting and improving the cemetery, or the provisions exempting the property from all taxation, and prohibiting the future laying out of any public ways through it.

At first, indeed, the whole immediate benefit derived from the property would be that resulting to the shareholders from the sale of lots, by way of dividend out of so much of the moneys received as might not be needed to be expended or reserved for the laying out, ornamenting and maintenance of the cemetery. But as fast as lots were sold, the property and interest of those purchasing and holding the land for its ultimate use of the permanent burial of the dead would increase, and the interest of the original associates would diminish. The profits to be derived from the sale of the land would cease, as to each parcel, as soon as it was sold for a burial lot. When the lots were all sold, the pecuniary interest of the associates or shareholders would disappear; but the duty to keep up the cemetery would remain, and the owners of lots would be the only persons having a peculiar interest in keeping it up. The corporation, in short, was established to secure and maintain, not merely the right of sale, but the right of burial, and was the representative, not only of the original proprietors of the land, but also of the subsequent purchasers of lots therein.

At the beginning, before any lots were sold, the owners of shares, divided among the proprietors according to their respective interests, would necessarily be the only persons concerned, or who could elect the officers of the corporation and managers of the cemetery. But with the gradual change of interest, resulting from the sale of lots, it was in full accord with the provisions of the charter, and best tended to carry out the main purpose of permanently maintaining a cemetery for the burial of the dead, that the holders of lots should take part in the election and so have a voice in the management.

After the cemetery had been laid out, improved and used for the burial of the dead for more than twenty years, and two thousand burial lots had been sold, it was a reasonable

exercise of the reserved power of Congress to authorize the owners in good faith of lots upon which burials had been made, to elect a majority of the trustees, in whom should be vested the control and management of the cemetery, with a due regard to the equitable rights of all persons having any vested interest therein; and to provide that a portion only of the receipts arising from the future sale of lots should be paid to the original proprietors, and the rest be devoted to the improvement and maintenance of the cemetery. Every legislative act is to be presumed to be a constitutional exercise of legislative power until the contrary is clearly established; and there is nothing in the record before us to show that the proportion of one-fourth of the gross receipts from future sales of lots, which is fixed by the act of Congress of 1877 and by the decree of the court below, as a compensation for the title and interest of the original proprietors and associates, is not a reasonable one.

It follows that the act of Congress of 1877 must be deemed constitutional and valid, within the principle affirmed by this court in the case of *The Holyoke Dam*, that a power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or rights vested under it, and which the legislature may deem necessary to secure either that object or any public right. *Comm'rs on Inland Fisheries v. Holyoke Water Power Co.*, 104 Mass., 446, 451; *Holyoke Water Power Co. v. Lyman*, 15 Wall., 500, 522. In the exercise of such a power by the United States, as was observed by the Chief-Justice in delivering the opinion of the court in the *Sinking Fund Cases*, "it is not only their right but their duty, as sovereign, to see to it that the current stockholders do not, in the administration of the affairs of the corporation, appropriate to their own use that which in equity belongs to others." 99 U. S., 700, 725.

The question then recurs whether, as against *Close*, the corporation must be held to have been duly organized under the act of Congress of 1854.

Upon this question the facts are these: *Close* knew that the act of incorporation had been granted by Congress, in which he was named as one of the original associates; that the cemetery had been dedicated and set apart by public religious ceremonies for the burial of the dead; that a pamphlet had been published, containing a full account of those ceremonies, the names of a full board of offi-



cers, including himself as president and one of the managers, and Clendenin as superintendent, and a code of by-laws, by the very first of which all lots were to be held in pursuance of the act of incorporation and to be used for the purposes of sepulture alone. With full knowledge of these facts, Close, for more than twenty years, exercised through Clendenin the sole management of the cemetery, and issued deeds and certificates of burial lots to the number of more than two thousand, bearing the corporate seal, and his own signature as president of the corporation, and having the by-laws printed on them. Being himself the owner of the whole land, he dealt with it in all respects as if it belonged to the corporation, and so represented it to the purchasers of lots. As no other person owned any part of the land or was entitled to a share in the corporation, the fact that no stock has been issued or divided is immaterial.

One who deals with a corporation as existing in fact is estopped to deny as against the corporation that it has been legally organized. And in a court of equity, at least, the owner of land, who stands by and sees it conveyed as belonging to another, cannot afterwards set up his own title against the grantee. The present case is yet stronger. Close did not merely deal with the corporation, and permit the corporation to convey parts of his land to purchasers of lots. But he himself assumed to act as the corporation, and himself made the conveyance, and the accompanying representations, to every purchaser.

By his acts he represented to the purchasers of lots that the cemetery had been created and the land was owned by the corporation under the charter of 1854, and, as a necessary consequence, that the corporation, and all rights derived from it, were subject to the provisions of that charter, including the reservation to Congress of the power of alteration, amendment or repeal. It is upon these representations that the purchasers of lots have acquired their title and have parted with their money; and the corporation, whose existence, he, at least, cannot deny, has the right and the duty, as the representative and in behalf of all the purchasers of lots, to enforce against him the obligation which he has thereby assumed. He holds the fee of the cemetery in trust for the corporation, and is entitled to nothing, as against the corporation and those whom it represents, but such compensation for his interest as original proprietor or stockholder, as is consistent with the state of things which he has represented to exist.

It is argued by the learned counsel for the

appellants that the estoppel and the obligation of Close cannot extend beyond the thirty acres which has been actually laid out. This argument appears to us to be fully met and answered in the able and thorough opinion of the court below, delivered by Mr. Justice Cox, who says: "It was held out to the lot-holders, not only that the ground immediately available for burial should remain set apart for that object, but that the cemetery should be forever under the protection of a perpetual corporation, charged with the duty of laying out and ornamenting the grounds, capable of receiving gifts and bequests, and empowered to make by-laws for the regulation of the affairs of the corporation; and the whole property was described as dedicated to purposes of the cemetery, not necessarily that the whole should be laid out into lots, but that it should all belong to the institution and be available for its general objects. This was not to be a mere graveyard in which each lotholder acquired a piece of ground in which to bury his dead, and at the same time become chargeable with the sole care of his particular lot; but the lotholders themselves became subject to by-laws and regulations having reference to the institution as an entirety and the perpetual preservation of the cemetery as an ornamental and convenient place for interment and for resort by the relatives of the dead." *Glenwood Cemetery v. Close*, 7 Washington Law Reporter, 214, 218.

Decree affirmed.

*Collections by Limitations.*—When an attorney collects money for his client, he must notify his client of the collection before the Statute of Limitations can begin to run as against the client's right to demand the money. [*Bronson v. Munson*, Sup. Ct. N. Y., N. Y. W. D., February 23, 1885.]—*Am.*

*Law Review.*

#### Phonography as an Aid to Lawyers.

The lawyer's right hand is almost indispensable to success in his profession; and, if trained in the art of Shorthand, it will be twice as valuable. The lawyer of to-day who cannot make his memoranda in Shorthand, or note his depositions and testimony as fast as speech, will often find himself suffering disadvantage, as compared with those who are thus skilled. Scientific Shorthand, as presented in the *Eclectic Manual of Phonography* (price, 76 cents) and the *American Phonographic Dictionary* (price, \$2.50), the latest and best works on this art, may now be readily learned without a teacher, so as to be used with advantage after a few months' study. For either or both books address the publishers, ROBERT CLARKE & Co., Cincinnati.

## The Courts.

### U. S. Supreme Court Proceedings.

APRIL 6, 1883.

The following gentlemen were admitted to practice during the past week:

Whit. M. Grant, of Davenport, Iowa; Horace B. Sargent, of Boston, Mass.

No. 678. The Reno County State Bank v. The First National Bank of Chicago. To C. C. U. S., D. of Kansas. Dismissed per stipulation.

No. 591. Joseph McCutchen v. The Board of Commissioners of Rice County. To C. C. U. S., D. of Minnesota. Dismissed on motion.

No. 235. Thomas Boose, receiver, &c., v. William King et al. Argued and submitted.

No. 237. William H. Ellis et al. v. The Atlantic Mutual Ins. Co. of N. Y. et al. Same.

APRIL 9, 1883.

No. 222. Emanuel Mahn v. The U. S. Appeal from Court of Claims. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 209. Samuel T. Williams v. Jackson Bros. & Co. From S. C. Dist. Col., and

No. 472. Jackson Bros. & Co. v. Jeannie K. Stickney. Same. Decree reversed and cause remanded. Opinion by Mr. Justice Gray.

No. 193. The District of Columbia v. The Washington Market Co. To S. C. Dist. Col. Judgment affirmed. Opinion by Mr. Justice Matthews.

No. 210. John L. Merriam v. The United States. Appeal from Court of Claims. Judgment affirmed. Opinion by Mr. Justice Woods.

No. 408. The United States v. Edward P. Curtis. Certificate of division in opinion. From C. C. U. S., E. D. of Missouri. Opinion by Mr. Justice Harlan.

No. 115. The Cook County National Bank v. The United States. From C. C. U. S., N. D. Ill. Decree reversed and cause remanded. Opinion by Mr. Justice Field.

No. 200. Magdalene Von Cotzhausen v. John Nazro, collector, &c., et al. To C. C. U. S., E. D. of Wisconsin. Judgment affirmed. Opinion by Mr. Justice Miller.

No. 809. The Township of Urbana v. Matthew M. Bolles.

No. 910. Same v. The Aetna Life Ins. Co.

No. 911. Same v. The First National Bank of Danville.

No. 912. Same v. George W. Sandford. To C. C. U. S., S. D. of Ill. Judgments affirmed. Opinion by Mr. Chief-Justice Waite.

No. 913. The Township of St. Joseph v. John M. Quackenbush. To C. C. U. S., S. D. Ill., and

No. 1153. The County of Richland v. George W. Balton et al. To C. C. U. S., S. D. Ill. Judgments affirmed. Opinion by Mr. Chief-Justice Waite.

No. 12. Original Ex parte. In re The State of Iowa. Rule to show cause granted. Announced by Mr. Chief-Justice Waite.

No. 13. Original Ex parte. In re the Devoe Manufacturing Co. Leave granted to file petition for writ of prohibition.

No. 237. William H. Ellis et al. v. The Atlantic Mut. Ins. Co. of N. Y. et al. Argued.

No. 238. J. B. Slawson v. The Grant Street, Prospect Park & Flatbush R. R. Co. Same.

No. 239. The State of Louisiana, ex rel. Folsom

Brothers, v. The Mayor, &c., of the City of New Orleans. Same.

APRIL 10, 1883.

No. 212. John H. Starin v. The Schooner Jesse Williamson, jr., &c. Argued.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

MARCH 31, 1883.

Catherine Tierney v. Frank E. Corbett et al. Judgment of Circuit Court modified.

In re Charles Heaton. Appeal from Commissioner of Patents. Ordered and decreed that the decision of the Commissioner of Patents be reversed, and that he receive the amendment submitted by the applicant.

APRIL 2, 1883.

Henrietta S. Butler v. Leonidas Scott. Decree of Special Term reversed.

John E. Zug et al. v. O. D. Barrett, trustee, et al. Appeal dismissed.

E. E. Downham & Co. v. Ellen Kelly et al. Decree affirmed with modifications.

Marion Jones v. James Smith et al. Decree of Special Term affirmed.

The United States, ex rel. Charles F. Havenner, v. Samuel Cross, treasurer, &c. Ordered that the defendant reply to plea within ten days, otherwise judgment by default.

Adjourned without day.

#### EQUITY COURT.—Justice James.

MARCH 30, 1883.

Temple v. Worthington. Sale ratified nisi.

Shomo v. Shomo. Testimony before examiner ordered taken.

Young v. Young. Offer of party at private sale authorized.

MARCH 31, 1883.

Davis v. Davis. Substitution of trustee ordered.

Byrns v. Berry. Restraining order continued.

Sage v. Sage. Guardian ad litem appointed.

JUDGE COX.

APRIL 3, 1883.

Sage v. Sage. Reference to auditor ordered.

Bennett v. Ellis, and

Bennett v. Egan. Commissions to get answer of infant defendant ordered to issue.

Balloch v. Hooper. Certain lots released.

Vincent v. Vincent. Time allowed to answer cross-bill.

Looney v. Quill. Reference to auditor and rule on plaintiff returnable April 9, 1883.

Richards v. Richards. Appearance of absent defendant ordered.

Fenwick v. Nat'l Fair Ass. Dismissal of bill ordered.

Jones v. Knight. Rule on defendant returnable April 4, 1883.

Smith v. Burch. Guardian ad litem appointed.

APRIL 4, 1883.

Western Granite Co. v. Chandler. Decree pro confesso against certain defendants.

Jones v. Knight. Rule against defendant discharged.

Richardson v. Richardson. Appearance of absent defendant ordered.

Sonnenschmidt v. Fugitt. Decree pro confesso and reference to auditor ordered.

Davis v. Davis. Testimony before examiner ordered taken.

## The Courts.

### IN EQUITY.—New Suits.

APRIL 9, 1883.  
5513. Arad Evans et al. v. Charles B. Church et al. Injunction. Com. sol., W. F. Mattingly. Deft. sols., Hine & Thomas.

APRIL 10, 1883.  
5514. Horace H. Brower et al. v. Margartha Herth. For partition. Com. sol., P. B. Stillson.  
5515. William E. Cady v. Mary A. Lawler et al. To enforce mechanics' lien. Com. sols., Gordon & Gordon.  
5516. William F. Bury v. Annie G. Bury. For divorce. Com. sols., Egge & Dean.

APRIL 11, 1883.  
5517. Frank Hume v. George C. White et al. To substitute trustee. Com. sols., Norris and Drury.

APRIL 12, 1883.  
5518. John P. Franklin et al. v. Virginia Young et al. For discovery. Com. sols., Bradley & Duvall.

### CIRCUIT COURT.—New Suits at Law.

APRIL 9, 1883.  
24382. J. C. Ergood & Co. v. John Burns. Note, \$236.29. Plffs atty, W. B. Lord.

24383. Henry C. Baldwin v. Independent Ice Co. Replevin. Plffs atty, A. O. Clark.

24384. Osceola C. Green v. Joachim Vissca, jr. Note, \$500. Plffs attys, Gordon & Gordon.

24385. Theodore H. N. McPherson v. Edwin R. Mason. Note, \$356. Plffs atty, P. P.

APRIL 10, 1883.  
24386. Tyasowskie Bros. v. Robert B. Mosher. Note and account, \$159.78. Plffs atty, A. D. Wilcox.

24387. Robert Craig et al. v. James H. Rowland. Ejectment. Plffs attys, Merrick, Morris and Hamilton.

24388. Same v. Brainard H. Warner. Ejectment. Plffs attys, same.

24389. Same v. Susan V. McNamee. Ejectment. Plffs attys, same.

24390. William S. Cornwine & Co. v. Rosalie Bleecker. For judgment, \$256.52. Plffs attys, Carusi & Miller.

APRIL 11, 1883.  
24391. L. Seldner & Son v. Lewis Kaufman. Account, \$3,523.89. Plffs attys, Totten and Bailey.

24392. William Lilley v. Stephen W. Dorsey. Damages, \$10,000. Plffs attys, Ottenden & Mackey.

24393. Robert Craig et al. v. Patrick O'Donoghue. Ejectment. Plffs attys, Merrick & Morris and Hamilton.

24394. Gustavus Schn v. The District of Columbia. Damages, \$1,000. Plffs attys, Morris and Hamilton.

24395. William C. Farquhar et al. v. The Washington Market Co. Damages. Plffs atty, F. T. Browning.

24396. Henry Ruppert v. The District of Columbia. Damages, \$3000. Plffs atty, L. Tobriner.

24397. District of Columbia v. J. H. Johnson et al. Rent of wharf, \$10,000. Plffs atty, A. G. Riddle.

APRIL 12, 1883.  
24398. John Nagle v. The Alex. & Fred. R. R. Co. Plffs attys, Hanna & Johnson.

24399. Robert B. Croyley et al. v. William T. Duvall. Note, \$2,108.02. Plffs atty, F. W. Jones.

### PROBATE COURT.—Justice James.

MARCH 24, 1883.  
Chas. A. Kolb, guardian; first account passed.  
Wm. F. Scala, guardian. Same.

MARCH 26, 1883.  
Estate of Elizabeth H. Garner; receipts of distributees filed and account of executor passed.

Estate of Sarah W. Farris; proof of publication filed; commission issued to take depositions of witnesses to will.

Annie Burrus, guardian; bonded and qualified.

Upton H. Ridenour, guardian; petition and order.

MARCH 27, 1883.  
Upton H. Ridenour, guardian; bond perfected.

Estate of Ellen E. Ross; petition for letters filed.

Estate of Ella S. Dodge; inventory of personal estate returned by administratrix.

MARCH 28, 1883.  
Estate of Richard Vigle; administratrix bonded and qualified.

Will of John Coyne filed for probate.

MARCH 29, 1883.  
Estate of Elizabeth Decker; petition and order admitting will to probate and letters granted.

MARCH 30, 1883.  
Estate of Chauncy Smith; inventory of personality.

Estate of Wm. D. Aiken; citations against parties returned served.

Estate of John Markriter; inventory and list of debts.

Estate of Rachel W. Birch; petition and order of publication directed.

Estate of Francis B. Lord; final notice returnable April 27, 1883.

Estate of Bushrod Birch, petition for administration and order of publication.

Estate of Catharine Brown; citation against next of kin returned served.

Estate of John G. Stafford; citation against administratrix returned served.

Justice Hagner ordered the issue of orders of publication in the cases of the estate of Rachel W. Birch and estate of Bushrod Birch.

MARCH 31, 1883.

Will of Charles W. Utermehle filed for probate.

Estate of Charles Gordon; receipt of heirs returned and filed with account.

Estate of Maria Benter; notice of motion for appointment of collector, &c.

Will of Jane E. Alexander filed for probate; citation against Jane E. Mickie returnable April 6, 1883.

Estate of Jared L. Elliot; answer of Circuit Court to the issues; will decreed void and letters granted.

Estate of John E. Clark; granting letters of administration.

The following accounts were passed: Frank T. Brown, guardian; Charles C. Collison, guardian; Love L. Fort, guardian; Walter Middleton, guardian; Sarah Wingate, guardian.

Charles E. Gibbs, guardian; petition and order of appointment; bonded.

James B. Peake; same.

Estate of Laura V. Coyle; account of administrator.

Estate of Elizabeth Tauffer; account of executor.

Estate of Henry Thorn; same.

Estate of Jared L. Elliot; order allowing \$1,200 attorneys' fees for defending will.

Estate of Royal Parkinson; petition and order appointing administrator; bonded.

Estate of Cecelia Cais; petition and order admitting will to probate and granting letters.

Estate of Sarah W. Farris; commission to take proof of will.

Estate of William D. Aiken; proof of publication and administration appointed and bonded.

Michael Halloran, guardian; renunciation of guardianship of Margaret E. Denmead; and Halloran appointed and bonded.

Estate of James F. Bateman; administratrix appointed and bonded.

Estate of Elizabeth Decker; inventory returned by executor and sale ordered.

Estate of Helen L. Stewart; order directing taxes to be paid by purchaser.

Estate of Patrick Brown; certificate of finding of jury setting aside will; petition and order granting letters of administration; bonded.

Estate of Patrick H. Cooney; consent of next of kin to the appointment of administrator.

Estate of J. Erhard Mack; proof of publication and order appointing administrator; bonded.

Estate of Martha E. Popkins; same.

APRIL 2, 1883.

Estate of Wm. Orme; receipts filed.

Will of Geo. O. Garrison filed for probate.

APRIL 3, 1883.

Estate of Eliab Kingman; petition of executors for probate and letters.

Will of Charles A. Friedericks; petition for probate filed.

Will of Geo. Gordon fully proved.

Estate of Maria Benter; collector bonded and qualified.

Estate of Wm. D. Aiken; administrator partially exonerated his bond.

Peter P. Little, guardian; bond signed.

Estate of John F. Havenner; inventory of personal estate returned by administrator.

Estate of Caroline A. Dolbear; deposition to be taken in Chicago of witness to will.

APRIL 6, 1883.

Estate of Anthony Buchly; final notice of administrator o. t. a. to be published.

Estate of Jane E. Alexander; citation returned served; will proved by two witnesses.

Estate of Wm. E. Kibbey; claim of party sworn to.

Estate of Charles H. Moree; report of administratrix.

Estate of Eliab Kingman; motion to withdraw caveat.

Estate of Jennet Tucker; receipts filed with accounts.

Estate of Andrea de Frouville; letter of Danish envoy in relation to administration filed.

Estate of Caroline Fowler; petition of executor; will proved by one of the witnesses.

Will of Chas. A. Walls; proved by second witness.

APRIL 7, 1883.

Will of Geo. O. Garrison; proved by the subscribing witnesses, &c.

Estate of Andrea de Frouville; administrator appointed and bonded.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

DANIEL BROWN, Administrator.

H. T. TAGGART, Solicitor.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 7, 1883.**

In the matter of the Will of Ellab Kingman, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Abner Kingman and William W. Boyce.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. April 7, 1883.**

In the matter of the Will of Charles A. Friedrichs, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Friedrichs.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.

LOUIS SCHADE, Solicitor.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 7, 1883.**

In the matter of the Estate of Ellen E. Ross, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Adelaide L. Dodson.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.

CAMPBELL CARRINGTON, Solicitor.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding an Equity Court, April 18, 1883.**

JESSIE S. HERSEY

(Married by the name of Carrie J. Brown.)

v.

EDWARD E. HERSEY.

(Married by the name of William G. Taylor.)

On motion of the plaintiff, by Mr. Norris, her solicitor, and it appearing that a subpoena was duly issued and a return endorsed by the marshal of the District "not to be found," and that an affidavit of Jacob Oriser, a disinterested witness, is filed in the cause, that the defendant is a non-resident of the said District, and has been absent therefrom six months, it is ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.

A true copy. Test: 15-3 E. J. Mears, Clerk.

No. 8510.

Eq. Doc. 23.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Royal Parkinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

GEORGE B. PARKINSON, Administrator.

15-3

75 West 4th street, Cincinnati, Ohio.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Vile, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of March, 1883.

her

ELIZABETH M VIGLE,

mark.

Administratrix.

15-3

C. M. MATTHEWS, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Andrea de Frouville, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1883.

LUKE C. STRIDER, Administrator.

H. E. DAVIS, Solicitor.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM LORD, use of KIRBY,

v.

PATRICK O'DONOGHUE ET AL.

No. 8429. Eq. Doc. 23.

Upon the coming in of the trustees' second report, it is this 9th day of April, A. D. 1883, ordered, that the sale of lot No. 7, in the subdivision of lot No. 3, in square No. 878, and the sales of parts of lot No. 12 in square No. 748 be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of May next. This report states the amount of sales of said lot 17 in square 878 at \$6,318 90, and of sales in said lot No. 12 in square No. 748 at \$700: Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the Court.

W. S. COX, Justice.

A true copy. Test: 15-3 E. J. Mears, Clerk.

JESSE MILLER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.**

In re estate of J. L. Waldrop.

In consideration of the petition of Phebe Warren Tayloe, herein filed, it is this seventh day of April, 1883, ordered by the court, that if H. W. Waldrop, the widow of J. L. Waldrop, or Robert J. Lindsay, the administrator of the said Waldrop, deceased, in the State of North Carolina, where the said Waldrop died, or some relation of the said Waldrop, deceased, or some larger creditor of the estate of said Waldrop than the petitioner, Phebe Warren Tayloe, do not apply for and obtain letters of administration on the estate of said J. L. Waldrop, in the District of Columbia, issuing thereupon from this court, on or before the twenty-seventh day of April, 1883, the prayer of the petition of said Phebe Warren Tayloe for letters of administration on said estate in this District to issue to her attorney, George F. Appleby, will be granted by this court: Provided, publication of this order be made in the Washington Law Reporter at least once a week before said date.

A true copy.

15-3

W. S. COX, Justice.

H. J. RAMSDELL, Register of Wills D. U.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business.** April 10, 1888.

In the case of Harvey Kennedy, Executor of James C. Kennedy, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 4th day of May A. D. 1888, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 15-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of April, 1888.**

HENSON EUSTRICH

MAKIR EUSTRICH.

No. 3512. Eq. Doc. 22.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant, Makir Eustrich, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. 15-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business.** April 13, 1888.

In the matter of the Estate of Isaac Delano, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James S. Delano.

All persons interested are hereby notified to appear in this court on Tuesday, the 1st day of May next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
F. P. CUFFY, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of April, 1888.**

WILLIAM F. BURY

ANNIE G. BURY.

No. 3516. Equity Docket.

On motion of the plaintiff, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendant, Annie G. Bury, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Charles W. Utermoehle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.

AUGUSTE W. UTERMÖEHLE, Executor.  
BRADLEY & DUVAL, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of Patrick H. Cooney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of April, 1888.

JOHN H. COONEY, Administrator.  
W. W. WISHART, Solicitor. 15-3

*Legal Notice.*

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Cecelia Cain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of March, 1888.

WILLIAM I. SIBLEY,  
GEORGE F. T. COOK,  
VOORHEES & SINGLETON, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a., on the personal estate of Eliza Bold, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1888.

JOHN H. BROOKS, Administrator c. t. a.  
W. T. WISWALL, Solicitor. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Clara B. Brooks Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1888.

15-3 T. W. BARTLEY, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of William D. Aiken, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of April, 1888.

WILLIAM F. HELLEN, Administrator.  
CRITTENDEN & MACKAY, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of Catharine W. Garner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.

15-3 ALEXANDER J. BENTLEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Elizabeth Decker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of March, 1888.

GEORGE O. WALKER,  
OSCAR P. SCHMIDT.  
WM. H. DENNIS, Solicitor. 14-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 14th day of March, 1883.

MAY E. FITZ GERALD

No. 8490. Eq. Doc. 23.

ALEXANDER FITZ GERALD.

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Alexander Fitz Gerald, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 12-3 R. J. Meigs, Clerk. &c.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Markriter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1883.

FREDERICK M. DETWEILER, Executor.

HENRY WISE GARNETT, Solicitor.

12-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lewis B. Wynne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2nd day of April, 1883.

LEWIS B. WYNNE, Jr., Executor.

GEO. A. KING, Solicitor.

14-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of March, 1883.

JONATHAN G. BIGELOW

No. 8,501. Eq. Doc. 23.

JOHN A. MASON ET AL.

On motion of the plaintiff, by Mr. F. P. B. Sands, his solicitor, it is ordered that the defendants, John A. Mason and Bettie E. Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 13-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 21st day of March, 1883.

JENNIE CASTINE

No. 8,479. Equity Docket 22.

WILLIAM CASTINE.

On motion of the plaintiff, by Mr. Pelham, her solicitor, it is ordered that the defendant, William Castine, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 12-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of April, 1883.

WILLIAM LORD, USE OF KIRBY.

No. 8429. Eq. Doc. 22.

PATRICK O'DONOGHUE ET AL.

Upon the coming in of the trustees' report of the sales of parts of lot No. 26, in the subdivision of lot 3 in square No. 618, it is this 6th day of April, 1883, ordered, that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of May next: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto. The report shows the sale of the east 25 feet by 100 thereof to W. F. Eaton for \$2,637.50; of the adjoining 25 x 100 feet to L. O. Cresser for \$2,525; of the adjoining 25 x 100 feet to C. T. Heinicke for \$2,425; of the adjoining 25 x 100 feet to Sephin Gatti for \$3,387.50; of the adjoining 25 x 100 feet (with the building thereon) to Lewis Behrens for \$2,500; of the adjoining 25 x 100 feet to J. T. Hawkins for \$2,412.50. The aggregate of said sales are reported to be \$15,887.50.

By the Court. W. S. COX, Justice.  
T. JESUP MILLER, Solicitor. 14-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of April, 1883.

ELLET P. RICHARDSON

No. 8,491. Eq. Doc. 22.

JAMES P. RICHARDSON.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, James P. Richardson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. W. S. COX, Justice.  
True copy. Test: 14-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 3rd day of April, 1883.

LAURA A. RICHARDS

No. 8368. Eq. Doc. 22.

SAMUEL RICHARDS.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered, that the defendant, Samuel Richards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice, &c.  
A true copy. Test: 14-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 30th day of March, 1883.

ELIZABETH MAHONEY

No. 8,507. Eq. Doc. 23.

JOHN HENRY MAHONEY.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 14-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hannah C. Wentz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of March, 1883.

JOSEPH M. PARKE,  
BALTUS DE LONG.

C. H. ARMES, Solicitor.

14-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Arsenus T. Harvey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1883.

14-3 ANGELA HARVEY, Executrix.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans' Court Business. April 6, 1883.

In the case of James S. Edwards and William H. Goode, Administrators c. t. a. of Anthony Buchly, deceased, the Administrators c. t. a. aforesaid have, with the approval of the court, appointed Friday, the 4th day of May, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

14-3 Test: H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

EDWARD TEMPLE ET AL. }  
 V. } 7767. Equity Doc. 21.  
 CHARLES WORTHINGTON ET AL. }

On consideration of the report of Charles D. Fowler, trustee in this cause, of the sale of lot numbered nine (9) in square numbered nine hundred and sixty-eight (968) to Mrs. E. L. Putnam for the sum of nine hundred and seventy-five dollars (\$975) cash, it is, by the court, this 30th day of March, A. D. 1883: Ordered that said sale be and the same hereby is ratified and confirmed unless cause to the contrary thereof be shown on or before the 30th day of April next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of April, 1883.

By the Court. MAC ARTHUR, Justice.  
 A true copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

SOPHIA GRIMES ET AL. }  
 V. } No. 7,805. Equity Doc. 21.  
 H. C. SMITH ET AL. }

Upon consideration of the report of A. B. Duvall, trustee filed this day, it is by the court, this 30th day of March, A. D. 1883: Ordered, that said trustee be and is hereby authorized to accept the offer of five hundred and fifty dollars cash, made by Edward Temple for the purchase of right, title and interest of the parties to this cause in and to the real estate in the proceedings mentioned. And it is further ordered that said sale be finally ratified and confirmed unless cause to the contrary thereof be shown on or before the 20th day of April, 1883. Provided a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. W. S. COX, Justice.  
 A true copy. Test: 13-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 24, 1883.**

In the matter of the Estate of Robert B. Wagner, late of the District of Columbia, deceased.  
 Application for Letters of Administration on the estate of the said deceased has this day been made by Charles W. Smiley.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: [13-3] H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

A. S. WORTHINGTON ET AL., Trustees, }  
 V. } No. 8152.  
 O. A. REED, Administratrix, et al. } Equity Doc. 22.

The trustee in this cause having reported the sale of all the interest and estate of which William B. Reed died seised and possessed in original lot 13 and lots 23 and 24 of Bushrod W. Reed's subdivision, all in square 290, for the sum of \$175, cash: it is this 6th day of April, 1883, ordered and decreed that the said sale stand confirmed unless objections thereto be filed on or before the 6th day of May, 1883, provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before the said date.

By the Court. WALTER S. COX, Justice.  
 A true copy. Test: 14-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sterling T. Austin, late of Lake Providence, Louisiana, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the 20th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of March, 1883.

FLORINE A. AUSTIN, Administratrix.  
 SHELLABARGER & WILSON, Solicitors. 123

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of March, 1883.**

JAMES M. GREGORY }  
 V. } No. 24,850. At Law.  
 HENRY A. BROWN. }

On motion of the plaintiff, by Messrs. Crittenden & Mackey, his attorneys, it is ordered that the defendant, Henry A. Brown, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published once a week for three weeks, previous to said rule day.

By the Court. MAC ARTHUR, Justice.  
 True copy. Test: 13-3 B. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 30, 1883.**

In the matter of the Estate of Rachel W. Birch, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 30, 1883.**

In the matter of the Estate of Bushrod Birch, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n., c. t. a., on the estate of the said deceased has this day been made by George A. Bartlett.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n., c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 CHAPIN BROWN, Solicitor. 13-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 24, 1883.**

In the matter of the Estate of Mary Duvall, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Duvall.

All persons interested are hereby notified to appear in this court on Friday, the 30th day of April next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 WM. A. MELOY, Solicitor. 13-3.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. March 30, 1883.**

In the case of William B. Lord, Executor of Francis B. Lord, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 27th day of April, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 13-3 H. J. RAMSDELL, Register of Wills.



# Washington Law Reporter

WASHINGTON - - - - - April 21, 1888.

GEORGE B. CORKHILL - - - EDITOR

## Leading Cases of the Year.

### COMMON AND COMMERCIAL.

**Goddard v. O'Brien** (46 L. T. Rep., N. S., 306, 9 Q. B. Div., 57), is of considerable importance as further weakening the once "leading case of *Cumber v. Wane* (Stra., 426; 1 Smith L. C., 7th ed., 341), which had been previously qualified by *Sibtree v. Tripp*, 15 M. & W., 25; 15 L. J., 318, Ex. In *Goddard v. O'Brien* it was held that where A, being indebted to B in £125 7s. 9d., for goods sold and delivered, gave B a cheque for £100 payable on demand, which B accepted in satisfaction, there was a good "accord and satisfaction." Mr. Baron Huddleston adopted the summary in 1 Smith L. C., 349, of the doctrine of *Cumber v. Wane* and its numerous exceptions: "That a creditor cannot bind himself by a simple agreement to accept a smaller sum in lieu of an ascertained debt of larger amount, such an agreement being *nudum pactum*. But if there be any benefit, or even any legal possibility of benefit, to the creditor thrown in, that additional weight will turn the scale, and render the consideration sufficient to support the agreement." For severe criticism on the law relating to "accord and satisfaction," see *Pollock on Contracts*, 160.

The case of *Jennings v. Hammond* (51 L. J., Q. B., 493; 9 Q. B. Div., 225), is a striking example of the great disadvantages of any dealing with a society of more than twenty persons which ought to be, but is not, registered under the Companies Act, 1862. It was held that the Ipswich Mechanics' Mutual Benefit Society was illegal. Its object was to raise by monthly subscriptions and payments a fund for making advances to members. The right to borrow was from time to time put up to auction among the members and sold to the highest bidder. It was also held that a promissory note given by a member to a trustee of the society to secure an advance was invalid. This decision followed *Re Padstow, &c., Assurance Association* (45 L. T. Rep., N. S., 774; 20 Ch. Div., 137), and forms one of a series commencing with *Arthur Average* (L. Rep., 10 Ch. App., 542; 32 L. T. Rep., N. S., 713).

The case of *Goodman v. Saltash* (Law Times, 12th Aug., 1882, p. 267; 7 App. Cas.,

685), affirmed the right of "inhabitants" of certain ancient tenements to dredge for oysters in a river where a borough corporation have a several oyster fishery, and that as such inhabitants had exercised this privilege from time immemorial, a lawful origin must be presumed if reasonably possible. It was therefore presumed that the grant to the corporation was subject to a trust for such inhabitants. This decision in favor of a claim by "inhabitants" forms a contrast to a very numerous class of cases in which such a claim failed. See *Chilton v. Corporation of London* (38 L. T. Rep., N. S., 499; 7 Ch. Div., 740); *Lord Rivers v. Adams* (39 L. T. Rep., N. S., 39; 5 Ex. Div., 361); *Williams on Commons*, 194; *Tudor L. C. Conv.*, 8d ed., 137. *Gateward's Case* (6 W. Rep., 60), and the other authorities were distinguished. On the other hand *Pearce v. Scotcher* (9 Q. B. Div., 162; 46 L. T. Rep., N. S., 342) shows that the public generally cannot claim a right to fish in non-tidal waters, even when they are to some extent navigable rivers.

*Gibbs v. Guild* (46 L. T. Rep., N. S., 248; 9 Q. B. Div., 59) illustrates the effect of the Judicature Act in enabling the court to give equitable relief, in an action in the nature of a common law action, where the defendant pleads the statute of limitations, and the plaintiff, in his reply, alleges fraudulent concealment. It was held by the Court of Appeal that, in an action to recover by way of damages money lost by the fraudulent representations of the defendant, a reply to a defence of the statute of limitations that the plaintiff did not discover, and had not reasonable means of discovering, the fraud within six years before action, and that the existence of such fraud was fraudulently concealed by the defendant until within such six years, was good. It appears that in equity the replication would have been held good (*Booth v. Lord Warrington*, 4 Bro. P. C., 163), and though there were at least two decisions that, in a strict common law action with common law pleadings, such a replication would not have been held good (*Hunter v. Gibbons*, 1 H. & N., 459; 26 L. J., 1 Ex.; *Imperial Gaslight Company v. London Gaslight Company* 23 L. J., 303, Ex.; L. Rep. 10 Ex., 39; 18 Jurist, 497), yet equity must prevail. Lord Coleridge said the two last-mentioned decisions were not binding on this court.

*Heaven v. Pender* (47 L. T. Rep., N. S., 163; 9 Q. B. Div., 302) shows that the courts will not usually consider a person who supplies a defective article to another liable for damage occasioned by its defect to a third party who is a stranger to the contract. The



defendant supplied and erected a staging round a ship under a contract with the shipowner. The plaintiff was employed by the shipowner to paint the ship and in the course of the work fell from the staging and was injured by a defect in its condition. Defendant was held not liable. *Winterbottom v. Wright* (10 M. & W., 109) was followed, and *George v. Skivington* (21 L. T. Rep., N. S., 495; L. Rep., 5 Ex. 1)—the case of deleterious hairwash sold to a husband for the use of his wife—received some disapproval. *Lantridge v. Levy*, 2 M. & W., 519; 4 M. & W., 337—the “gun” case—was distinguished, as in the present case there was no fraud.

With regard to companies, several cases were decided which show the danger of paying dividends out of capital. In *Guinness v. Land Corporation of Ireland* (47 L. T. Rep., N. S., 517; 22 Ch. Div., 439) it was expressly provided by the articles of association that certain part of the capital and income, arising from B shares was to be held in trust to pay a preferential dividend on the A shares. It was held that as this proposed disposal of capital was not mentioned in the memorandum of association, it was *ultra vires*. It was also held that the contemporaneous articles could not be read to supply omission in the memorandum, except with respect to matters which the act did not require to be stated in the latter. *Harrison v. Mexican Railway* (32 L. T. Rep., N. S., 82; L. Rep. 19 Eq., 358) was explained. It should be noticed that the whole arrangement was perfectly *bona fide* and honorable. In the case of *Re Alexandra Palace Company* (46 L. T. Rep., N. S., 730; 21 Ch. Div., 149;), where the articles provided that dividends should only be paid out of profits, the directors were ordered to repay to the liquidator some dividends paid out of capital. In *Re Exchange Banking Company; Flitcroft's Case* (21 Ch. Div., 519; 48 L. T. Rep., N. S., 86) the directors, were similarly ordered to pay dividends, and were not allowed to set off money due to them from the company, nor to set up the statute of limitations.

The case of *Kemp v. Falk* (47 L. T. Rep., N. S., 454; 7 App. Cas., 573) should be noticed as an authority with respect to stoppage *in transitu* where there is a sub-purchase. Lord Blackburn said that notice to a shipowner is not effectual till communicated to the master, but it imposes on the owner an obligation to send it on with reasonable diligence. *Ex parte Golding, &c.* (42 L. T. Rep., N. S., 270; 13 Ch. Div., 628) was distinguished.—*London Law Times*.

IN making up the forms for last week's number of the LAW REPORTER there was accidentally omitted from the conclusion of the opinion in the case of *Tierney v. Corbett* the following paragraph:

We think the damages are too large in this case, and our suggestion is that if the plaintiff will remit \$100, we will correct the judgment here and make it conform to the precedents; that the plaintiff recover the specific property if it can be recovered by him, and, then, if not, recover the amount of damages. That is the conclusion we have reached in this case.

## Supreme Court District of Columbia

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

THE UNITED STATES

v.

THE NATIONAL BANK OF THE REPUBLIC.

AT LAW. No. 13,706.

{ Decided March 13, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

B., an officer of the army, having a claim against the United States for pay and allowances, gave T. & Co. a power of attorney to collect the same. The power of attorney did not authorize T. & Co. to endorse any check that might be issued in settlement thereof. On the 16th of January, 1866, L., United States Paymaster, issued his check in payment of the claim on the defendant bank, which was one of the designated depositories of the United States, in the city of New York. The check was drawn payable to the order of B., and was mailed by L. to T. & Co. One of the firm forged an endorsement on the check in B's name and had it cashed by R. & Co.; R. & Co. then sent it to the Bank of A., in the city of New York, who presented it to the defendant bank, when it was thereupon paid. B., not receiving the money or hearing from his claim, collected it from another paymaster. Three years afterwards (January 15, 1869) the forgery of the endorsement was discovered, whereupon L., within six days afterwards, notified the defendant bank, and advised it to seek recourse against the Bank of A., and within nine days more furnished it with such proofs of the forgery as were possessed by the Government. In February, 1875, the United States brought suit against the defendant bank to recover the money paid on the check. The defenses were that L., and not the United States, should have brought the suit, and laches in failing to give timely notice whereby the defendant had lost its recourse against the prior endorsers. *Held*, 1st. That the suit was properly brought by the United States. 2nd. That the payment of

a forged check gives no right of action on the paper itself, against any party to it, as in the case of a bill or note or check which had been dishonored; the party paying can only sue the party paid for money had and received, leaving it to the latter to sue his prior endorser in the same manner. The defendant, therefore, had not been deprived of its recourse against the only party it could have sued, viz., the Bank of A., since under the statute of limitations of New York there were still three years left after it received notice of the forgery, in which it could have brought suit. Consequently there were no such laches shown on the part of the United States as would disentitle it to recover.

THE CASE is sufficiently stated in the opinion.

GEO. B. CORKHILL and RANDOLPH COYLE for the United States.

R. K. ELLIOT for defendant.

Mr. Justice Cox delivered the opinion of the court.

J. A. Lawyer was a paymaster in the United States Army, and in January, 1866, had a large amount to his credit, as such paymaster, in the National Bank of the Republic, the defendant in this action, which is, and then was, a National bank and a duly designated depository of the public moneys of the United States.

Captain Edwin R. Brink, formerly in the army, had a claim against the government for pay and allowances, which he employed Rutger Teal & Co. to collect, giving them a power of attorney for that purpose, and also a printed voucher signed and receipted in blank, to be filled up with the amount that might be ascertained to be due to him. As Brink testifies, and we may assume, the power of attorney did not authorize Teal & Co. to indorse any check that might be issued to Brink in the settlement of his claim.

On the 16th of January, 1866, at Washington, the Paymaster Lawyer, in settlement of Brink's claim, issued his check on the defendant, payable to the order of Brink, for \$966.37, and sent it by mail to G. W. Scott, said to have been a clerk in the office of Teal & Co.

The check was indorsed in Brink's name, presumably by Rutger Teal, to the order of Riggs & Co., and cashed by the latter.

Riggs & Co. then indorsed it to the order of the Bank of America of New York. On the 18th of January it was paid in New York by the Central National Bank of New York and charged to the defendant, and on the 19th it was paid by the defendant and charged to the account of Lawyer. This account was subsequently settled, and this, with his other checks, was returned to Lawyer and remained in his possession until January 13, 1869.

In the settlement of Lawyer's accounts with the United States, Brink's receipt, which he had received from Rutger Teal was, of course, filed as one of his vouchers.

Brink, in the meanwhile, having heard nothing of the collection of his claim, had received pay from another paymaster.

The voucher filed by Lawyer made it appear that he had been paid twice. He was therefore called upon to refund. At the request of the second auditor, Lawyer, on the 15th of January, 1869, forwarded the check in question to him and it was submitted to Brink's inspection, whereupon he pronounced it a forgery, and made an affidavit to that effect on the 15th of the same month.

Lawyer must have been notified of that fact, and perhaps called upon to pay the amount—though no evidence is given directly on that point—for on the 21st of January he wrote to the president of the defendant bank, notifying him of the fact that the check had been paid on a forged indorsement; that he would have to look to the bank for reimbursement, and requesting him to correspond with the Bank of America on the subject and demand reimbursement.

Mr. Coyle, the president, in reply, wrote on the 23d of January, requesting Lawyer to forward the check and accompany it with his own affidavit, together with that of Brink; that the latter's indorsement was a forgery.

On the 27th of January Lawyer wrote to Coyle, enclosing his own affidavit, as requested, and stating that the check "is now in Washington, and I will request the party in whose hands it is to deliver it to you."

On the 30th of January, Henry C. Harmon, Deputy Second Auditor of the Treasury Department, according to his testimony, delivered the check and the affidavit of Brink, as to the forgery, which had been made on the 15th, as before stated, to one of defendant's officers.

This suit was brought in February, 1875, but the case was not tried until June 5, 1882.

At the trial, the court held that the United States had lost its recourse against the bank by laches. The learned judge says: "A case where the difficulty was not discovered until the lapse of three years, and then only incidentally, and where it appears that five years or more after that were allowed to elapse before any definite action was taken, shows laches on the part of the government, notwithstanding they had twelve or fifteen years before been engaged in a great war."

And again: "It strikes me that under all the circumstances the government has been

guilty of laches in not commencing this proceeding earlier."

And again: "Year after year passes; the check becomes outlawed, as far as Riggs & Co. are concerned."

And again: "It is evident that the power of indemnifying itself against prior parties to this check is lost."

I have cited these passages from a somewhat lengthy charge, in order to indicate the theory upon which the court instructed the jury to find for the defendant. It seemed to be partly that the laches consisted in not discovering the forgery for three years after it occurred, and partly in not bringing suit earlier.

At the same time, the court stated that "the bank within a reasonable time was certainly notified of the fact, and furnished with some proof that the payee had never endorsed the note, and that he had never authorized anyone to endorse it;" and again, "to be sure, this notice to the bank, accompanied with an affidavit that the endorsement of the check had been forged, was sufficient to put them upon inquiry, and perhaps to enable them to pursue Riggs & Co. and the bank from which they received it."

The argument for the defense in this court, however, has proceeded upon a different ground from that taken by the court below, and one directly opposed to it, viz., that the laches consisted in not giving timely notice to the bank so as to enable it to have recourse to antecedent parties dealing with it in reference to this check.

Before examining these questions, it may be well to notice another, which may be called preliminary, and that is, whether this suit can be maintained by the United States, or ought to have been brought, and could only be maintained, by the paymaster, Lawyer.

The affirmative was held by the court below; the opposite has been maintained here in argument.

It is true, that the dealings of the bank were with Lawyer only. But he was an agent of the United States. He deposited government funds with the defendant. These deposits were, in a legal sense, loans of government money to the bank and created a debt of the bank to Lawyer, in his character of agent of the United States.

On the general principles of the law of agency, there can be no more doubt of a principal's right to sue for and recover money of his, loaned by his agent, than of his right to sue for the price of his goods sold by his agent. Of course, that right may be modified by equities between the agent and the third

person, where he has dealt as a principal and was supposed to be such, by the stranger, but no such question arises here.

Independently of these general principles, the express legislation of the United States brings the bank into direct privity with the Government. It was a national bank and a duly designated depository of the public moneys. As such, it was bound to receive public moneys issued to paymasters and other officers and to perform all such reasonable duties in that character as might be required of them. Sec. 5753, Rev. Stat. They became as much the agents of the Government as the paymasters themselves. Indeed, after a thorough review of the legislation on this subject, Judge Blatchford, in the case of *Morgan v. Vandyck*, 7 Blatchf., 147, came to the conclusion, with much show of reason, that the United States only could sue a bank which was a designated depository of public moneys for a balance due, and that the action could not be maintained by a paymaster who had deposited the funds.

However this may be, we consider the right of the Government to sue, if it so elect, to be sufficiently clear.

What then is the relation of the United States to the defendant, with reference to this check?

The defendant paid this check for account of the United States, and upon exhibiting it as a voucher, in settlement of its accounts with the Government, in the person of its agent, the paymaster received credit for it. This is precisely the same thing as if the United States had paid back the money to the bank; and if the credit was given under a mistake of facts, there is the same right of action for money had and received that would exist if the money had actually been reimbursed to the bank by the United States. Such was the view taken by the Supreme Court in the case of *the Bank of the United States v. The Bank of Georgia*, 10 Wheaton, 333, where it appeared that in a case of mutual accounts, forged bills of the defendant had been passed to the credit of the plaintiff in account. The court said: "We are of opinion that it is a case of actual payment. We treat it in this respect exactly as the parties have treated it, that is, as a case where the notes have been paid and credited as cash. The notes have not been credited as notes or as a special deposit; but the transaction is precisely the same as if the money had first been paid to the plaintiffs, and instantaneously the same money had been deposited by them."

"Considering then the credit in this case as a payment of the notes, the question arises

whether, after a payment, the defendants would be permitted to recover the money back; if they would not, then they have no right to retain the money and the plaintiffs are entitled to a recovery in the present suit.

Virtually, then, the United States have refunded to the bank money which the bank had paid for the United States on a forged endorsement, and the main question is whether the United States may recover the money as paid under a mistake of fact.

The only objection alleged is laches. We can hardly suppose that the omission to discover the forgery for three years after it was committed can be pronounced by the court as laches in law.

In the case of *Don et al. v. Postmaster-General*, 1 Pet., 918, it appeared that after a postmaster had been removed from office, the Postmaster-General, *in direct violation of law*, had omitted even to open an account with him, or to make any claim on him for five years, and yet, although it was alleged that he was solvent when he was discharged, and became insolvent before suit brought, these facts were held no defense to his sureties, on the ground that the laches of its officers cannot be imputed to the Government.

Several previous decisions were cited in cases of admitted neglect on the part of officers, in delaying to call to account delinquent financial agents of the Government to the prejudice of their sureties, in all which the Government was sustained.

A still harder case was that of *Smith v. The United States*, 5 Pet., 294, in which it appeared that after the removal of a paymaster from office, no notice was given to him to account for nine years, and in the meantime he had become insolvent and the sureties had lost the means of indemnifying themselves. Yet they were held not discharged.

In the present case there seem to be no facts in proof showing that the delay was the fault of the officers of the United States, instead of being the natural consequence of the then condition of affairs.

Assuming that in 1869 the United States had a cause of action against the defendant, the mere delay to bring suit cannot be alleged as laches. The statute of limitations is no defense against the United States, and their mere omission to sue the defendant is equally unavailable as such, as the Supreme Court have held in a number of cases, which it is unnecessary to review.

But in this case the reliance is placed upon the principles of commercial law which, it is claimed, impose upon the Government special duties in a case like this.

When forged paper is accepted and paid by a bank, it is said that immediate notice, upon discovery of the forgery, must be given to the party receiving payment in order to entitle to recovery and the same rule is said to be applicable to the United States in a case like the present.

There are several classes of cases in which this question may arise. If a bank accepts and pays a check of its customer, whose name turns out to be forged, it has no remedy against the innocent holder of the check, because it is bound to know its customer's signature. And, generally, when a drawee accepts a bill he admits the signature of the drawer and cannot afterwards dispute it against a *bona fide* holder.

There are cases in which the mere receipt of paper without objection will be treated as acceptance, and to repel that presumption, prompt notice is necessary. And this will be found to be the character of cases in which the strictest rules as to notice have been asserted. *Cooke et al. v. United States*, 91 U. S., 389. And here the strictness approaches that required as to endorsers or drawers of negotiable paper.

But another class of cases is where the paper of strangers, whose signatures a banker is not bound to know, is discounted, purchased or cashed. And to the same class belongs the case where a banker's own customer's check has the payee's endorsement which the banker is not bound to recognize, forged, and the banker pays to one claiming under this forged endorsement. There is a right to recover in such case, but the law does exact diligence in giving notice after the discovery of the forgery, and one of the objects of prompt notice is recognized to be, to enable the party called upon to refund to have recourse against the person from whom he received the forged instrument.

But there is no fixed rule in such a case, like that which prevails as to notice of dishonor of negotiable paper.

All that the law requires is a reasonably prompt notice under the circumstances of each case, and undoubtedly the situation of the parties with reference to remedies over against antecedent parties, is a proper element to enter into the estimate of the reasonableness of notice.

In the case of *the United States v. Union National Bank of New York*, decided in the District Court for the Southern District of New York, by Judge Choate, and affirmed in the circuit court by Judge Blatchford, it appeared that a draft by a United States paymaster on the United States Assistant Treas-

urer at New York, in favor of one Lewis, was received by Rutger Teal; that Lewis' name was forged by Teal in the endorsement of the draft and finally it was taken by the defendant and paid to defendant by the assistant treasurer. The United States were notified in 1867 that the endorsement of Lewis was forged, but did not notify the defendant of it for about two years, and then, after examination, the deputy assistant treasurer conceded it was genuine. Nevertheless, in 1877, eight years after, suit was brought against the bank. Meanwhile Polhamius & Jackson, from whom the bank had received it, became insolvent and the bank lost its recourse against them.

Under these circumstances, it seems very properly to have been held that the delay to give notice was fatal to the right of recovery.

It may be well to compare the present case with that.

The fact of forgery was not known to the Government until January 15, 1869, when the check was submitted to Brink in Washington. Within six days it was communicated to Lawyer who resided in New York, and his letter was addressed to the bank notifying it of the fact and of its responsibility for a return of the money. In response to a request of the President, made by letter of the 23d, Lawyer's affidavit was forwarded on the 27th, and on the 30th Brink's affidavit and the forged endorsement were delivered to the bank. So that, within six days after discovery of the forgery the bank was notified of it, and advised to seek recourse against the New York bank, and within nine days more was furnished with all the proof the Government could supply.

It was said that the United States never gave notice or made demand. But Lawyer if he could claim payment from the bank, could only claim it as agent of the United States, and notice from him, as such, the United States could surely avail themselves of. We think with the court below that this was virtually a notice and demand by the United States.

The notice seems reasonably prompt unless there were peculiar circumstances in the case that made it otherwise.

It is shown that the statute of limitations of New York does not bar an action such as the defendant might have brought, to recover this money from the New York bank, for six years. It had, then, three years left within which to sue the New York bank from which it received the check, and that bank is not shown to have been insolvent. So far, then, it seems clear that the delay of six days did

not deprive the defendant of its recourse against antecedent parties.

It is said, however, that it had lost its recourse against Riggs & Co.

Riggs & Co. are supposed to have cashed the check on January 16, 1866, and the defendant paid it on the 19th. With reference to either date the statutory period of limitation would have expired before January 21st, 1869, when the defendant received notice of the forgery. The delay, then, it is said, deprived them of recourse against Riggs & Co., an antecedent party on the paper.

But this position rests upon the, at least, doubtful, if not plainly erroneous assumption that the defendant ever had any recourse against Riggs & Co.

Had this been a draft on the United States, endorsed by Riggs & Co., and taken by the defendant as endorsee, and afterwards dishonored, the defendant, by the law-merchant, would have had recourse against all the antecedent parties. But the defendant was not the holder of the paper as endorsee. The defendant was the drawee of the check, and accepted, paid and cancelled it. Prior endorsers are only liable upon a note, bill or check to a holder when it is dishonored. When the note or bill is paid, the maker or acceptor who has paid it by mistake, *i. e.*, to a wrong person, or on a forged endorsement, has no right of action *on the paper itself*, against any party to it. His right is to sue in assumpsit for money had and received, to recover his money, as paid under mistake of fact. And, of course, such an action can only be maintained by him against the party to whom he paid the money, leaving it to the latter, in turn, to sue his immediate precessor in the transaction. The defendant, therefore, never could sue any other party than the New York bank from which it received the check.

This view was recognized in the case of the Bank of Commerce v. Union Bank, 3 Comst., 230. That was an action by the drawees of a bill which had been altered and raised after it left the drawer's hands, to recover the amount which the drawees had paid. The court said: "This action is not founded *on the bill*, as an instrument containing the contract on which the suit is brought. The acceptor can never have recourse *on the bill against the endorsers*. But the plaintiff's right of recovery rests on equitable grounds." In the Canal Bank v. Bank of Albany, the principle was recognized that money paid by one party to another, through mutual mistake of facts, in respect to which both are equally bound to inquire, may be recovered back," &c.

This relation of the drawer to the other parties is also recognized in a general way in the case cited.

It does not seem, then, that in consequence of the brief delay in giving the defendant notice of the forgery, any recourse against other parties was lost. We are, therefore, unable to concur with the judge who tried the case below, that a case of laches against the United States is made out sufficient to defeat the action.

Objection was made to the form of the exception taken on the part of the United States, as insufficient to bring the case properly before the court. Without examining this question in detail, we are of opinion that the exception is sufficiently explicit and formal to bring the merits of the case before us.

A new trial is granted.

## United States Court of Claims.

L. VON HOFFMAN & CO. vs. THE UNITED STATES.

THE MANHATTAN SAVINGS INSTITUTION vs. THE UNITED STATES.

1. Government bonds, payable to bearer, are negotiable after, as well as before, their maturity.
2. If negotiated before maturity, the holder's title cannot be impeached; if after, it may be.
3. A call of five-twenty bonds for redemption, by a public notice given by the Secretary of the Treasury, in pursuance of the act of July 14, 1870, (16 Stat. L., 272, ch. 256), brought the bonds to maturity three months after its date; and whoever bought them after that time, bought them as overdue paper; and his title is subject to be impeached.
4. As between the *bona fide* purchaser of called bonds after the maturity of the calls, and an owner from whom the same had been before stolen, the title of the latter will prevail.

DRAKE, Ch. J., delivered the opinion of the Court:

On the 27th of October, 1878, the vault of the Manhattan Savings Institution in the city of New York was burglariously entered and an iron safe therein was broken open, and from it were stolen and carried away a large number of bonds and other securities, representing a value of about two and a half million dollars; among which were sixteen United States five-twenty coupon bonds, consols of 1865, issued under the authority of the act of March 3, 1865, "to provide ways and means for the support of the Government," (13 Stat. L., 468, ch. 77). It does not appear that the officers or servants of the Institution were guilty of any negligence in the care and custody of said bonds and securities.

The Secretary of the Treasury issued seven calls for five-twenty bonds for redemption, under the authority of the act of July 14, 1870, "to authorize the refunding of the national debt" (16 Stat. L., 272, ch. 256); in which calls were embraced all of said sixteen bonds. The first of the calls was dated July 30, 1878, and the last December 18, 1878, and each call matured three months after its date. The day of the maturity of the last call was, therefore, March 18, 1879.

Some weeks after this last date, R. Raphael & Sons, bankers in London, purchased there six of these sixteen bonds; and, thereafter, in May, June and July, 1879, purchased ten more; all of which they sold to the claimants L. Von Hoffman & Co., then doing business as bankers in New York. The former firm bought the bonds in London, in good faith, at their full market value, without any reason to suspect any infirmity in the title to them; and the latter firm took them in equal good faith, and paid R. Raphael & Sons the full market value of them, namely, par and accrued interest, without any reason to suspect any such infirmity. The first intimation to either of those firms of the bonds having been stolen, was given by the Treasury Department to L. Von Hoffman & Co., when they sent to the Department the first lot of six of the bonds, and received therefrom information to that effect; and the same information was repeated as to the several succeeding lots, aggregating ten bonds, transmitted by them for redemption; and it was not until after the information was thus given to them, that it was imparted to R. Raphael & Sons. There is, therefore, not the least ground for imputing any wrong whatever in the transaction to either of those firms. The only question is as to the legal ownership of the bonds.

There can be no doubt that if R. Raphael & Sons or L. Von Hoffman & Co. had purchased the bonds in good faith, for value, before the maturity of any call of the Secretary of the Treasury embracing them, they would be entitled to hold them against all the world. (*Murray vs. Lardner*, 2 Wallace, 110; *Texas vs. White*, 7 Ibid., 700.)

The only point in the case is, as to whether their purchase after the maturity of calls by that officer, changes L. Von Hoffman & Co.'s legal rights. If those calls did not, in law, have the effect of making the bonds then due and payable, the Government cannot impeach or question the title of that firm, and must pay the amount of the bonds to them. If, on the other hand, the calls did have, in law, the effect of making the bonds due and payable at the maturity of the calls, then L. Von Hoff-

man & Co. took overdue paper, subject to any and every defense which might be urged against their title.

The counsel for L. Von Hoffman & Co. claim that to hold that the bonds became due and payable at the maturity of the calls, is to hold that thereafter they ceased to be negotiable. We do not concur in this view. *Negotiable* is a term applied to any contract, the right of action on which is capable of being transferred by endorsement and delivery, or by delivery alone, and the transfer of which vests in the holder a right to sue thereon in his own name. These bonds were payable to bearer, and were therefore transferable by delivery, and therefore were, without dispute, negotiable in the legal acceptation of the word, at any time before they became due and payable. Were they not equally negotiable after that time? In our opinion, it cannot be questioned that they were. We know of no rule of law which terminates the transferability of negotiable paper on the day it becomes due and payable. Least of all is there any such rule in regard to Government bonds payable to bearer. They are just as negotiable after maturity as before; but with different results in the two cases as to the legal rights of the holder. He that takes them in good faith before their maturity, takes them with an unimpeachable title; but the title of him who takes them after maturity may be impeached.

To avoid the necessary effect of this doctrine, the counsel of L. Von Hoffman & Co. takes the position that the time of the maturity of these bonds is that *fixed on their face* for their payment by the United States, namely, the first day of July, 1885, and that until after that day they continue fully negotiable, with all the protection accorded by the law-merchant to negotiable paper. And as a necessary corollary from this position he goes further, and contends that the calls of the Secretary of the Treasury for these bonds for redemption, and the non-redemption of the bonds at or after the time when they might have been presented for redemption, did not make them then overdue in the sense of being dishonored; and that unless they were overdue in that sense, L. Von Hoffman & Co.'s title to them, acquired after the maturity of the several calls, cannot be impeached. Upon the soundness of these positions depends the right of L. Von Hoffman & Co. to these bonds. We have considered the positions with all the respect due to the able counsel, and are not able to sustain them, for reasons now to be stated.

The fundamental error in his position is in overlooking the very terms of the bonds them-

selves, which make a broad line of distinction between them and ordinary commercial paper. The latter has always a time of payment fixed by its own terms, and it is dishonored only when the promisor fails to pay at that time. But on the face of these bonds the Government, while fixing a day of payment, reserves to itself the right to pay before that day; and the question here is as to the effect of that reservation. To answer this question we must look not to the law-merchant, but to the statute law authorizing the issue of the bonds. They could have had no existence except by statutory authority; the reserved right to pay before the fixed day of payment could be stipulated for only in pursuance of statute; and to the statutes we must resort to determine the effects, direct and remote, of that reservation.

By the act of March 8, 1865, under which these bonds were issued, it was enacted as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized to borrow, from time to time, on the credit of the United States . . . any sums not exceeding in the aggregate six hundred millions of dollars, and to issue therefor bonds or treasury notes of the United States, in such form as he may prescribe and so much thereof as may be issued in bonds . . . may be made payable at any period not more than forty years from date of issue, or may be made redeemable, at the pleasure of the Government, at or after any period not less than five years nor more than forty years from date, or may be made redeemable and payable as aforesaid, as may be expressed on their face."

This provision expresses what the contract of the United States should be with parties from whom money should be borrowed; it formed, to every intent, a part of every bond issued under its authority; and it was notice to all the world that the Government reserved the right, at its own pleasure, to redeem the bonds issued under that authority, at and after such time as the Secretary of the Treasury might fix for their redemption.

The bonds in this case express on their face that they are payable on the first day of July, 1885; but they also express that they are "*redeemable at the pleasure of the United States after the first day of July, 1870.*" These terms of the contract were in exact conformity with the statute.

What is the signification of the word *redeemable* there? It simply expresses the right of the United States to buy and receive back the bond, by paying the full amount of it before the fixed day of payment. He who

took one of those bonds took it with full notice on its face that that right existed, and also with reference on its face to the act of Congress authorizing the bond to be so shaped. By so taking it he agreed that that right might be exercised by the United States at their own pleasure, at any time after the first day of July, 1870.

What is the meaning of the words "*at the pleasure of the United States*"? Did they refer merely to the time when that pleasure might be exercised? We think not. It seems to us quite clear that the pleasure might be exercised not only as to the time when, but also as to the place where and the terms on which, the bonds might be redeemed, and the legal effect which should attend their redemption. No other view appears to us consistent with the rights of the United States, whether considered as a contracting party or as a sovereign.

Of course the United States could indicate its pleasure only by an act of Congress. Notwithstanding the language of the bonds, there could be no right in any Department or officer, after the expiration of the five years, to redeem one of them without express authority conferred by such an act. This conveyed notice to every holder of a bond, that further legislation must be had before the bond could be so redeemed. And it also conveyed notice to him that he took the bond subject to the pleasure of the United States as to the character, scope, and effect of such legislation.

Such being the attitudes of the parties toward each other in relation to the bonds, the Congress declared the pleasure of the United States as to the exercise of the reserved right of redemption, by the following provision in the above cited act of July 14, 1870:

"The Secretary of the Treasury is hereby authorised . . . to pay at par and cancel any six per cent. bonds of the United States of the kind known as five-twenty bonds, which have become or shall hereafter become redeemable by the terms of their issue. But the particular bonds so to be paid and cancelled shall in all cases be indicated and specified by class, date, and number, in the order of their numbers and issue, beginning with the first numbered and issued, in public notice to be given by the Secretary of the Treasury, and in three months after the date of such public notice the interest on the bonds so selected and advertised to be paid shall cease."

In this provision the following things appear: 1. That it refers to bonds which had become, or should thereafter become, redeemable by the terms of their issue; 2. That the

redemption of them should be effected by their payment at par; 3. That the payment should be made by the Secretary of the Treasury; 4. That the Secretary should give public notice, indicating and specifying by class, date, and number the particular bonds to be at any time redeemed; and 5. That in three months after the date of such public notice the interest on the bonds selected and advertised by the Secretary to be redeemed should cease. Such was the form in which the United States saw fit to signify their pleasure as to the redemption of the bonds of which these sixteen were a part. That law, instantly on its passage, became, in legal effect, a part of every bond which expressed on its face that it was redeemable at the pleasure of the United States. Every holder of such a bond, at and after the date of that enactment, held it subject absolutely thereto, and to all legal results flowing from the operation thereof.

And now we come to the question whether a public notice—ordinarily termed a *call*—given by the Secretary of the Treasury, that the principal and accrued interest of designated bonds would be paid on and after a certain day, and that the interest on such bonds would cease on that day, had the legal effect of bringing the bonds to maturity on the specified day of payment? If it did have that effect then L. Von Hoffman & Co. bought—not dishonored, but—overdue bonds, which remained in the market, not because the Government had failed to pay them, but because the holders had failed to present them for payment at the time named by the Government for their presentation for that purpose. L. Von Hoffman & Co. contend that these bonds were not brought to maturity by those calls, but could be considered as matured only on the first day of July, 1885; and that therefore they took a title not subject to be impeached.

In considering this position the first point to be settled is the meaning of the maturity of a negotiable instrument. There can be but one answer to this—that the time of maturity is the time when the instrument becomes due and payable; that is, when the holder of it is entitled to demand, and the maker of it is bound to pay, all that is due upon it.

Ordinarily, the time of maturity is fixed by the terms of the instrument and in such case neither party to it can, by his own separate act, change the time. The holder cannot demand payment before the fixed day, nor can the maker compel the holder to receive payment before that day. This is so because the contract is to be enforced and fulfilled in strict accordance with its terms. Had these



bonds been simply payable on the first day of July, 1885, the United States could not have required the holder of them, under penalty of the stoppage of interest, to receive payment before that day, and therefore they could never before then have been brought to maturity.

But that is not this case. The bonds in question, we repeat, bore on their face the declaration of the right of the United States to redeem them after the first day of July, 1870, and that right was reserved to the United States by the act under which the bonds were issued, and was in every view, of the very essence of the contract. The subsequent act of July 14, 1870, prescribed how that right should be exercised.

Now, when that right was exercised in conformity with that act, we are unable to perceive why it did not bring these bonds to maturity, each one at the end of three months after the date of the call embracing it, when the holder of it would be entitled to receive the principal of it and accrued interest. This is no more nor less than just what he would be entitled to on any day of payment fixed in the bond. To contend, therefore, that the bond did not mature on the day specified in the Secretary's notice for its full payment seems to be wholly without justification. We therefore hold that each of the bonds in question did, in law, become matured on the day when the holder of it had the right, in pursuance of the Secretary's call, to receive payment of all then due on it; and that whoever bought them after that day took them as overdue paper, with only such title as his vendor had, and liable to have his title to them disputed and impeached.

There is in this ruling no hardship on L. Von Hoffman & Co. which they did not knowingly bring upon themselves. They knew that these were "called bonds," and they bought them as such. If, when they bought them, they believed that they had not matured, and would not mature until the first day of July, 1885, why should they have transmitted them, as they did instantly, to the Treasury Department for redemption? They bought them at par and accrued interest, at a time when it was a notorious public fact, of which we are entitled to take judicial notice, that in every money market in the world where United States bonds were bought and sold, these bonds, if payable only in 1885, would have commanded a considerable premium. Why did they not, by a sale of them, realize the profit of the premium? The answer is very simple and inevitable. They knew that the bonds were due and payable; that they had,

in eyes of all dealers in such securities, reached their maturity; that they had no market value, except as representing the right to receive the principal of them and accrued interest; and they lost no time in seeking to obtain from the Treasury just that amount, and asked no more.

From all this it follows, as it seems to us, that L. Von Hoffman & Co. acquired, as against the Manhattan Savings Institution, no title to these stolen bonds, and that the institution has still the title to them, wholly unimpaired by the fact of their having been stolen.

At the argument much was said on both sides in regard to the alterations of the numbers of five of the bonds. We have not noticed that subject because, as between these contending claimants, the alterations have no bearing on the question of title. If the bonds were annulled by the alterations, then neither claimant is entitled to recover on them. Neither, therefore, can attempt to overthrow the other's right of recovery, because of the alterations, without thereby overthrowing his own right. It is only the Government that could set up the alterations as a defense, and it has not done so. On the contrary, it stands ready to pay the altered bonds whenever the rightful ownership of them is judicially determined; and it is to obtain such determination that the whole controversy was remitted to this court by the Secretary of the Treasury.

The decision of the court is, that the petition of L. Von Hoffman & Co. be dismissed; and that judgment be entered in favor of the Manhattan Savings Institution for the principal of the sixteen bonds, and for the aggregated interest, accrued on them up to the maturity of the several calls made by the Secretary of the Treasury, amounting together to \$18,229.28.

#### Executors Buying In.

In the case of *The People v. The Board of Bank Brokers' Building Co.*, recently decided (N. Y. Daily Register, April 7, 1885), reversing the decision of the Supreme Court, the court of appeals passed upon two questions of frequent importance: One, the effect of an executor's indirect purchase of real property belonging to the estate; and the other, the degree of doubt or uncertainty in reference to a title which will exonerate a purchaser from completing his contract.

In this case, nearly twenty years ago the sole surviving executor conveyed premises of the deceased, for a large pecuniary remuneration, and four days afterward the grantee and his wife conveyed the premises back to the

executor for the same consideration, naming him now, however, individually and not as executor; and it did not appear that the executor had ever accounted in the Surrogate's office. The premises were subsequently conveyed to the defendants in this case, and upon their dissolution or insolvency the receiver sold them at auction, and now sought to compel the purchaser to complete. The purchaser's objection was that these links in the chain of title were defective.

The court taking care to guard against the inference that a *bona fide* purchaser without notice would necessarily be precluded from acquiring title, applied the rule that this must be deemed a purchase by the executor of property of the estate, within the principle that such a purchase is voidable at the election of the *cestui que trustent*.

It is well settled that the usual clause in a judgment directing the sale of real property, allowing each of the parties to purchase, does not allow either an executor or trustee, who is a party as such, to purchase in his own right. (*Fulton v. Whitney*, 66 N. Y., 548.)

There have been numerous cases applying the principle to purchases made indirectly.

Thus the rule is applied in *Ames v. Downing*, (1 Bradf., 321), where, at the solicitation of one of the executors and trustees, his counsel bought in a piece of property at a sale under the power in the will: and upon the accounting it was held that the executor might be charged, on the ground of the invalidity of the sale, with the value of the property at the time of sale, although a third person held the title.

In *Davone v. Fanning*, (2 Johns. Ch., 252), the rule was applied to a purchase by a third person at auction, at the instance of the executor, and for the benefit of the executor's wife, who was the beneficiary and for whose payment the sale was made. Under the present state of the law in respect to the separate property of married women, an interesting question might be raised now in a similar case, as to whether the wife, a beneficiary, could not purchase and hold, if there was no evidence of fraud, collusion or unfair advantage in the sale made by her husband as executor.

So in the case of the *Bank of Orleans v. Torry*, (7 Hill, 260), the rule was applied against a cashier of a bank who bid in his own name, where the bank was bound to protect the interests of other persons.

So according to a dictum in *Gallatian v. Cunningham*, (8 Cow., 361), the auctioneer who makes the sale is equally within the rule, and this is consonant with general principle.

The fact that the executor after such a pur-

chase passes his accounts is not necessarily conclusive against relief, especially where the sale was not had at his instance, so as to bring the proceeds within his account, but by his allowing the sale to be made by foreclosure, instead of proceeding himself to sell for non-payment of debts, and where he bought in himself, at an inadequate price, at the foreclosure sale thus procured.

The question whether the sale is absolutely void, or only voidable at the instance of a *cestui que trust*, depends upon circumstances. Under general principles of equity, it is voidable at the instance of any *cestui que trustent*, notwithstanding ratification by others, even forming the majority, but it is only voidable.

There are, however, statutes applicable to particular cases, which make such a sale absolutely void, even as against subsequent innocent purchaser, for value. (*Forbes v. Hal-say*, 26 N. Y., 53.)

In other cases the rule has been applied against agents of executors, against a probate judge buying at a sale ordered by himself and against relatives of the executor buying at an inadequate price. See on this subject, also, 7 *Southern Law Review*, N. S., 850.

According to the recent case of *Valentine v. Belden*, in the 20th of Hun, an administrator buying in, and taking a deed conveying to him individually, and not as administrator, can contract as administrator to sell, and the purchaser is bound to fulfil on a tender of a deed conveying individually, and as administrator. See, also, *Alterauge v. Christianson*, (11 North. R., 806), where the executrix purchased lands with the funds of the estate, and took the title in her own name, with habendum, to herself, her heirs and assigns, but distributing hers as executrix; and it was held that a judgment creditor of such executrix levying upon such lands, and making sale under his execution acquired no title thereto as against the heirs of the estate.

—[*N. Y. Daily Register*.]

**A PREMATURE DECISION.**—The superior court was in session in one of the lower counties of the circuit, and the solicitor, with the counsel for the defense, was engaged in the selection of a jury for the trial of a man charged with murder. As usual in such cases some difficulty was experienced, and the court was getting tired of the tedious proceedings.

"Call the next juror, Mr. Clerk," said the solicitor for the hundredth time.

The clerk called, and an old man, with an honest face and a suit of blue jean clothes, rose in his place, and the solicitor asked the following customary questions:

"Have you, from having seen the crime committed, or having heard any of the evidence delivered under oath, formed or expressed any opinion as to the guilt or innocence of the prisoner at the bar?"

"A. No, sir."

"Is there any bias or prejudice resting on your mind for or against the prisoner at the bar?"

"None, sir."

"Is your mind perfectly impartial between the State and the accused?"

"It is."

"Are you opposed to capital punishment?"

"I'm not."

All the questions had been answered, and the court was congratulating itself on having another juror, and the solicitor in solemn tones, said:

"Juror, look upon the prisoner; prisoner, look upon the juror."

The old man adjusted his spectacles and peeringly gazed at the prisoner for full half a minute, when he turned his eyes toward the court and earnestly said:

"Judge, I'll be condemned if I don't believe he's guilty!"

It is useless to add that the court was considerably exasperated at having lost a juror, but the more humorously inclined had a good laugh at the old man's premature candor.—*Elberton (Ga.) South*

## The Courts.

### IN EQUITY.—New Suits.

APRIL 14, 1883.  
24400. Christian G. Schnelder v. The Cap., North O st. & S. W. R. Co. Certiorari. Defts attys, Hine & Thomas.

APRIL 16, 1883.  
24401. Lorin M. Saunders v. Wm. O. Chase et al. Judgment of Justice Helmick, \$51.96.

24402. Same v. Same. Judgment of Justice Helmick, \$75.

APRIL 17, 1883.  
24403. Robert W. Donnell et al. v. Rufus Ingalls. Note, \$1,254.46. Pliffs atty, W. Blair.

24404. E. W. Sturdevant et al. v. Thomas M. Carpenter. Note, \$511.25. Pliffs atty, J. P. Jordan.

APRIL 19, 1883.  
24405. Stockstill & Co. v. George Mason. Account, \$359.25. Pliffs atty, John B. Lerner.

24406. Sarah A. Arnold v. Judson T. Cull. Replevin. Pliffs atty, J. E. Norris.

24407. Milford Fishman v. Clayton McMichael. Replevin. Pliffs atty, L. Tobriner.

24408. Emil A. Neresheimer et al. v. Adams Express Co. Damages, \$7,000. Pliffs atty, R. Fendall.

24409. Same v. Same. Damages, \$4,000. Pliffs atty, same.

24410. The United States of America v. Chas. A. McEuen et al. Bond. Pliffs atty, G. B. Corkhill.

24411. Milford Fishman v. Clayton McMichael. Damages, \$10,000. Pliffs atty, L. Tobriner.

### PROBATE COURT.—Justice James.

APRIL 16, 1883.  
2519. William L. N. Smallwood et al. v. Jane Lynch et al. For sale to make partition. Com. sols., Elliot & Robinson.

2520. August S. Campbell v. John Letcher et al. To remove cloud off title. Com. sols., A. O. Bradley.

2521. Patrick Barry et al. v. John H. Clarke et al. To construe will. Com. sol., Chas. A. Elliot.

APRIL 18, 1883.  
2522. Jane W. Phillips et al. v. Herman D. Walbridge et al. To construe will. Com. sols., Carnel & Miller.  
2523. Frank M. Pitts v. Jennie S. Pitts. For divorce. Com. sols., Curtis and Thompson.

APRIL 19, 1883.  
2524. John Shanahan v. William Dayton et al. Creditors' bill. Com. sol., V. B. Edwards.  
2525. Antonio Pelletier v. John G. Campbell et al. For account. Com. sol., A. L. Merriman.  
2526. Thomas Knowles v. Anthony Hyde et al. To marshal securities. Com. sol., C. M. Matthews.  
2527. Harriet E. Middleton v. John Middleton et al. To reform deed. Com. sol., R. D. Mussey.

APRIL 20, 1883.  
2528. Washington Childs v. Louisa V. Childs. For divorce. Com. sol., H. T. Wiswall.

### CIRCUIT COURT.—New Suits at Law.

APRIL 7, 1883.  
Estate of John O. Evans; Account of sales returned by administratrix.

Estate of Eliab Kingman. Order of publication.  
Estate of John P. Sharburne; order passed directing distribution.

Estate of Susanna V. Walker; account of administrator filed.

Estate of Jane E. Alexander; will admitted to probate.  
Estate of J. L. Waldrop; petition of creditor for administration and order of publication.

Estate of Louise Joachim; proof of publication filed; will admitted to probate and letters granted.

Estate of John G. Stafford; account of administratrix approved and passed.

Estate of Rebecca Barker; rule on executor under the will returnable April 14.

Rachel A. Moore, guardian; order to expend fund.  
Stephen B. Ellery, guardian; account passed and order for support of ward.

Estate of Chas. A. Fredericks; order of publication.  
Estate of Patrick Brown; administrator bonded and qualified.

Estate of Romanus Rudhardt; account of executrix approved and passed.

Daniel Murray, guardian; account approved and passed.  
Estate of Lewis Kengia; account of administrator approved and passed.

Estate of Chas. W. Utermehle; will admitted to probate and letters issued.

APRIL 9, 1883.  
Benjamin Charlton, guardian; value of orphan's real estate returned.

Will of Catharine Brown; issue sent to Circuit Court to try validity of will.

Estate of Geo. H. Vickery; petition filed.  
Estate of Matthias L. Aik; affidavit as to record.

Estate of Andrea de Frouville; administrator bonded.  
APRIL 10, 1883.

Will of Timothy Sullivan; filed with petition of executor.  
Estate of J. O. Kennedy; final notice issued.

Estate of Geo. E. Garrison; will admitted to probate.  
Estate of Wm. D. Aiken; motion overruled.

Estate of Geo. H. Vickery; administratrix bonded.  
APRIL 11, 1883.

Will of Sarah Hammond; fully proved by third witness.  
Will (holographic) of Joseph K. Barnes; filed for probate.

APRIL 12, 1883.  
Codicil of Sarah Hammond; proved by one witness.

Estate of Chas. W. Utermehle; return of executor.  
APRIL 13, 1883.

Estate of Bernard Henze; motion to dismiss appeal in General Term filed.

Estate of Isaac Delano; petition for administration filed; order of publication.

Estate of S. Louisa Yeabower; proof of publication filed.  
Estate of Sarah W. Parris; will duly proved.

Estate of John G. Stafford; appeal of administratrix from order.

Estate of Patrick H. Cooney; administrator bonded.  
Arabella V. Cooney, guardian; bonded and qualified.

Estate of Sarah Hammond; renunciation of next of kin; codicil fully proved.

Estate of Chas. A. Watte; will admitted to probate and letters granted.

Will of Joseph K. Barnes; proved.  
APRIL 14, 1883.

Estate of Rebecca Barker; appearance of executor in response to rule.

Estate of Andrea de Frouville; inventory of personalty filed.

Estate of Joseph K. Barnes; petition and order admitting will to probate; letters granted.

Estate of Wm. S. Buchly; motion made and granted.  
Estate of Maria Bentor; inventory and list of debts returned by collector.

Estate of Clara B. B. Hall; sale ordered.  
 Estate of Timothy O. Howe, petition. Administrator bonded and qualified.  
 Estate of John Keefe; proof of publication; will admitted to probate and letters granted.  
 Estate of Ann Phillips; petition for administration. Publication ordered.  
 Estate of Mathias L. Alig; order to compromise claim.  
 Estate of Sarah Hammond; will and codicil admitted to probate and administrator appointed and bonded.  
 Will of S. Louise Yeabower; exhibited and proved by two witnesses.  
 Geo F. Appleby, guardian; order in reference to estate.  
 Estate of Patrick H. O'connor; petition of administrator to compromise claim.  
 The following accounts were passed:  
 Estate of Jared L. Elliott; 1st of collector.  
 Estate of Hester M. Louvrie; final of executors.  
 Samuel Maddox, guardian; first account.  
 James H. Smith, guardian; first account.  
 Estate of Jesse Williams; first account of executor.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Timothy O. Howe, late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

16-8 F. H. HOWE, Administrator.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George O. Garrison, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of April, 1883.

16-8 ANN B. GARRISON, Executrix.  
 1441 S st. n. w.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keefe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

Witness: Geo. E. JOHNSON. BRIDGET M. KEEFE,  
 mark.  
 Administratrix c. t. a.

P. B. STILSON, Solicitor.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of April, 1883.

CAROLINE MARKS ET AL. Plaintiffs.

v. No. 8276. Eq. Dec. 23.

WM. H. MAIN ET AL. Defendants.

On motion of the plaintiff, by Messrs. J. H. Smith and T. B. Warrick, their solicitors, it is ordered that the defendant, Lucy A. Fraser, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.

True copy. Test: 16-8 R. J. MATIAS, Clerk, &c.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jared L. Elliott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.

16-8 JOHN J. JOHNSON, Administrator.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

WILLIAM LORD, use of KIRBY, } No. 8429. Equity.  
 v. PATRICK O'DONNOSHER ET AL. }

Upon the coming in of the trustees' further report herein on this 16th day of April, A. D. 1883. It is, this 17th day of April, A. D. 1883, ordered, and decreed that the sales—  
 To Z. Tobriner, of lot 37, in square No. 749, for .... \$ 173.77  
 T. A. Daly W. ½ of lot 2, in square No. 628, for 1,490.00  
 T. E. Waggaman, W. ½ lot 23, in square 545, for. 490.00  
 T. E. Waggaman, E. ½ lot 23, in square 545, for.. 490.00  
 A. Behrend, part of square 678, for..... 2,478.98  
 T. D. Daly, E. ½ lot 13, in square No. 617, for. 1,600.00  
 and to A. Fauthuber, W. ½ lot 13, in square No.

617, for..... 1,710.00  
 be and the same hereby are finally ratified and confirmed unless cause to the contrary be shown on or before the 17th day of May next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the court. W. S. COX, Justice.

JESUP MILLER, Solicitor.

16-8

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17, 1883.

In the case of Ferdinand Theilkuhl, Executor of Gottlieb Rumpf, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

CHAS. A. WALTER, Solicitor.

16-8

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 14, 1883.

In the matter of the Estate of Ann Phillips, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Lynch.

All persons interested are hereby notified to appear in this court on Saturday, the 6th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.

HANNA & JOHNSTON, Solicitors.

16-8

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph K. Barnes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

MARY T. BARNES, Executrix.

WORTHINGTON & HEALD, Solicitors.

16-8

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 21, 1883.

In the matter of the Will of John M. Johnson, late of the District of Columbia, deceased, which will was filed herein on the seventeenth day of April, 1883.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by petition of Mary Virginia Wells, through her attorney, George F. Appleby.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.

Test: 16-8 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 17th day of April, 1883.

JOHN T. RICHARDS }  
v. } No. 24,343. Law Docket.  
GEORGE WILSON. }

On motion of the plaintiff by Messrs. Ross & Dean, his attorneys, it is ordered that the defendant, George Wilson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 16-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 21st day of April, 1883.

HARRIET E. MIDDLETON }  
v. } No. 8527. Eq. Doc. 23.  
JOHN MIDDLETON ET AL. }

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Benjamin Dant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 16-3 R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Lewis B. Wynne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2nd day of April, 1883.

LEWIS B. WYNNE, JR., Executor. 14-3  
Geo. A. King, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

A. S. WORTHINGTON ET AL., Trustees, }  
v. } No. 8132.  
O. A. REED, Administratrix, et al. } Equity Doc. 23.

The trustee in this cause having reported the sale of all the interest and estate of which William B. Reed died seized and possessed in original lot 13 and lots 23 and 24 of Bushrod W. Reed's subdivision, all in square 290, for the sum of \$175, cash; it is this 8th day of April, 1883, ordered and decreed that the said sale stand confirmed unless objections thereto be filed on or before the 8th day of May, 1883, provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before the said date.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 14-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of April, 1883.

WILLIAM LORD, USE OF KIRBY, }  
v. } No. 8429. Eq. Doc. 22.  
PATRICK O'DONOGHUE ET AL. }

Upon the coming in of the trustees' report of the sales of parts of lot No. 26, in the subdivision of lot 3 in square No. 518, it is this 6th day of April, 1883, ordered, that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of May next: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto. The report shows the sale of the east 25 feet by 100 thereof to W. F. Eaton for \$2,637.50; of the adjoining 25 x 100 feet to L. C. Creaser for \$2,525; of the adjoining 25 x 100 feet to O. T. Heinicke for \$2,425; of the adjoining 25 x 100 feet to Sephin Gatti for \$3,387.50; of the adjoining 25 x 100 feet (with the building thereon) to Lewis Behrens for \$2,500; of the adjoining 25 x 100 feet to J. T. Hawkins for \$2,412.50. The aggregate of said sales are reported to be \$16,887.50.

By the Court. W. S. COX, Justice.  
T. JESUP MILLER, Solicitor. 14-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of April, 1883.

ELLET P. RICHARDSON }  
v. } No. 8,491. Eq. Doc. 23.  
JAMES P. RICHARDSON. }

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, James P. Richardson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. W. S. COX, Justice.  
True copy. Test: 14-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 3rd day of April, 1883.

LAURA A. RICHARDS }  
v. } No. 8368. Eq. Doc. 23.  
SAMUEL RICHARDS. }

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered, that the defendant, Samuel Richards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice, &c.  
A true copy. Test: 14-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 30th day of March, 1883.

ELIZABETH MAHONEY }  
v. } No. 8,507. Eq. Doc. 23.  
JOHN HENRY MAHONEY. }

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. WALTER S. COX, Justice.  
A true copy. Test: 14-3 R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hannah C. Wentz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of March, 1883.

JOSEPH M. PARKE,  
BALTUS DE LONG, 14-3  
C. H. ARMES, Solicitor.

## THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Arsemaus T. Harvey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1883.

14-3 ANGELA HARVEY, Executrix.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans' Court Business. April 6, 1883.

In the case of James S. Edwards and William H. Goods, Administrators c. t. a. of Anthony Buchly, deceased, the Administrators c. t. a. aforesaid have, with the approval of the court, appointed Friday, the 4th day of May, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

14-3 Test: H. J. RAMSDELL, Register of Wills.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. April 10, 1883.

In the case of Harvey Kennedy, Executor of James O. Kennedy, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 4th day of May A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 15-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 12th day of April, 1883.

HENSON EUSTRICH

v. MAKIR EUSTRICH.

No. 8612. Eq. Dec. 22.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant, Makir Eustrich, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. 15-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. April 18, 1883.

In the matter of the Estate of Isaac Delano, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James S. Delano.

All persons interested are hereby notified to appear in this court on Tuesday, the 1st day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
F. P. CUFFY, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 13th day of April, 1883.

WILLIAM F. BURY

No. 8616. Equity Docket.

v. ANNIE G. BURY.

On motion of the plaintiff, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendant, Annie G. Bury, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles W. Utermoehle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

AUGUSTE W. UTERMÖEHLE, Executor.

BRADLEY & DUVALL, Solicitors. 10-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick H. Cooney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1883.

JOHN H. COONEY, Administrator. 15-3

W. W. WISHART, Solicitor.

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cecelia Cain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of March, 1883.

WILLIAM I. SIBLEY,

GEORGE F. T. COOK,

VOORHEES & SINGLETON, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Eliza Bold, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1883.

JOHN H. BROOKS, Administrator c. t. a.

W. T. WISWALL, Solicitor. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Clara E. Brooks Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1883.

15-3 T. W. BARTLEY, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William D. Aiken, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of April, 1883.

WILLIAM F. HELLEN, Administrator. 15-3

CRITTENDEN & MACKAY, Solicitors.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine W. Garner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

15-3 ALEXANDER J. BENTLEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth Decker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of March, 1883.

GEORGE C. WALKER,

OSCAR P. SCHMIDT.

WM. H. DENNIS, Solicitor. 14-3

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.  
DANIEL BROWN, Administrator.  
H. T. TAGGART, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, April 7, 1888.**

In the matter of the Will of Ellab Kingman, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Abner Kingman and William W. Boyce.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: 15-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, April 7, 1888.**

In the matter of the Will of Charles A. Friedrichs, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Friedrichs.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: 15-3 H. J. RAMSDALL, Register of Wills.  
LOUIS SCHADE, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, April 7, 1888.**

In the matter of the Estate of Ellen E. Ross, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Adelaide L. Dodson.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: 15-3 H. J. RAMSDALL, Register of Wills.  
CAMFBELL CARRINGTON, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding an Equity Court, April 13, 1888.**

JESSE S. HERSEY  
(Married by the name of Carrie J. Brown.)

EDWARD E. HERSEY.  
(Married by the name of William G. Taylor.)

On motion of the plaintiff, by Mr. Norris, her solicitor, and it appearing that a subpoena was duly issued and a return endorsed by the marshal of the District "not to be found," and that an affidavit of Jacob Criser, a disinterested witness, is filed in the cause, that the defendant is a non-resident of the said District, and has been absent therefrom six months, it is ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MILES, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Royal Parkinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.  
GEORGE B. PARKINSON, Administrator.  
15-3 75 West 4th street, Cincinnati, Ohio.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Vigle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of March, 1888,  
ELIZABETH M. VIGLE,  
her mark, Administrator. 15-3  
C. M. MATTHEWS, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Andre de Frouville, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1888.  
LUKE C. STRIDER, Administrator.  
H. E. DAVIS, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM LORD, use of KIRBY, } No. 6429. Eq. Doc. 22.  
v.

PATRICK O'DONOGHUE ET AL.

Upon the coming in of the trustees' second report, it is this 9th day of April, A. D. 1888, ordered, that the sale of lot No. 7, in the subdivision of lot No. 8, in square No. 576, and the sales of parts of lot No. 12 in square No. 748 be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of May next. This report states the amount of sales of said lot 17 in square 576 at \$6,818.90, and of sales in said lot No. 12 in square No. 748 at \$700. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MILES, Clerk.  
JESUP MILLER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.**

In re estate of J. L. Waldrop.

In consideration of the petition of Phebe Warren Tayloe, herein filed, it is this seventh day of April, 1888, ordered by the court, that if H. W. Waldrop, the widow of J. L. Waldrop, or Robert J. Lindsay, the administrator of the said Waldrop, deceased, in the State of North Carolina, where the said Waldrop died, or some relation of the said Waldrop, deceased, or some larger creditor of the estate of said Waldrop than the petitioner, Phebe Warren Tayloe, do not apply for and obtain letters of administration on the estate of said J. L. Waldrop, in the District of Columbia, issuing thereupon from this court, on or before the twenty-seventh day of April, 1888, the prayer of the petition of said Phebe Warren Tayloe for letters of administration on said estate in this District to issue to her attorney, George F. Appleby, will be granted by this court: Provided, publication of this order be made in the Washington Law Reporter at least once a week before said date.

A true copy. 15-3 W. S. COX, Justice.  
Test: H. J. RAMSDALL, Register of Wills D. O.



# Washington Law Reporter

WASHINGTON - - - - - April 23, 1883.

GEORGE B. CORNHILL - - - EDITOR

IN the case of *Wilder v. Welch*, (1 Mac A., 566), the Supreme Court of the District held that the privilege of a witness in attendance upon a Congressional committee is not higher than that of a member of Congress, but stands upon the same footing, which is freedom from arrest only, and not from the service of a simple summons. Authorities seem, however, to differ on the point, as substantially the same question of privilege was recently before the Court of Common Pleas of Erie County, Pennsylvania, in the case of *Gray v. Sill*, (13 Weekly Notes of Cases, 59), and a different conclusion was reached. The defendant, a member of the State legislature, being on a visit to his home in the city of Erie, under a temporary leave of absence, during the session, was served with a summons in an action of assumpsit, whereupon he moved to quash the writ, filing an affidavit setting forth these facts.

Galbraith, P. J., delivered the opinion of the court granting the motion to quash, and refers to the case of *Bolton v. Martin*, (1 Dallas, 317), as the first and leading case on the subject, in which Judge Shippen held that the defendant (Martin) who was a member of the Pennsylvania Convention to consider the adoption or rejection of the proposed Constitution for the Government of the United States, was privileged from the service of a summons as well as from arrest during the session of the convention and for a reasonable period before and after it.

It was urged by counsel that the constitution of the State, adopted since the decision in *Bolton v. Martin*, limited the privilege of the members of the legislature to exemption from arrest only, and from service of summons, but the court cited the cases of *U. S. v. Edmo* (9 S. & R., 147), *Wetherill v. Seitzinger* (1 Miles, 237), and *Holmes v. Nelson* (1 Phil., 217), to show that no distinction was made.

It was also urged in the argument that great injustice might be done in holding that the privilege in question extended to writs of summons as well as to arrests; as, for example, in a case where the statute of limitations might come in, but the court answered this by the suggestion that the suit might be instituted although compelled to lie dormant during the time over which the privilege extended.

## The Explosive Substances Act, 1883.

As the subject is not without interest on this side of the ocean, we copy from one of our exchanges (*The Irish Law Times and Solicitor's Journal*) the latest parliamentary enactment, designed for the suppression and punishment of that class of Irish agitators who advocate and contemplate the use of dynamite as a factor in their schemes of reform. The comprehensive and stringent terms of the act are supposed to have constrained the absence of Mr. Parnell from the recent convention of Irish organizations at the city of Philadelphia.

"Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

"1. This act may be cited as the Explosive Substances Act, 1883.

"2. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the *minimum* term allowed by law), or to imprisonment with or without hard labor for a term not exceeding two years.

"3. Any person who unlawfully and maliciously (a) does any act with intent to cause by an explosive substance, or conspires with in or (being a subject of Her Majesty) without Her Majesty's dominions, to cause by an explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property; or (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by



means thereof to endanger life or cause serious injury to property, shall, whether any explosion does or does not take place, and whether injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labor for a term not exceeding two years, and the explosive substance shall be forfeited.

"4. (1.) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding 14 years, or to imprisonment for a term not exceeding two years, with or without hard labor, and the explosive substance shall be forfeited. (2.) In any proceeding against any person for a crime under this section, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, and cross-examined as an ordinary witness in the case.

"5. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this act, shall be guilty of felony, and shall be liable to be tried and punished for that crime as if he had been guilty as a principal.

"6. (1.) Where the Attorney-General has reasonable ground to believe that any crime under this act has been committed, he may order an inquiry under this section, and thereupon any justice for the county, borough, or place in which the crime was committed, or is suspected to have been committed, who is authorized in that behalf by the Attorney-General, may, although no person may be charged before him with the commission of such crime, sit at a police court, or petty sessional, or occasional court house, or police station in the said county, borough, or place, and examine on oath concerning such crime any witness appearing before him, and may take the deposition of such witness, and, if he see cause, may bind such witness by recognizance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognizance; and the law relating to the compel-

ling of the attendance of a witness before a justice, and to a witness attending before a justice, and required to give evidence concerning the matter of an information or complaint, shall apply to compelling the attendance of a witness for examination and to a witness attending under this section. (2.) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself; but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in the case of an indictment or other criminal proceeding for perjury, be admissible in evidence against him, in any proceeding, civil or criminal. (3.) A justice who conducts the examination under this section of a person concerning any crime shall not take part in the committing for trial of such person for such crime. (4.) Whenever any person is bound by recognizance to give evidence before justices, or any criminal court, in respect of any crime under this act, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties; provided, that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

"7. (1.) If any person is charged before a justice with any crime under this act, no further proceeding shall be taken against such person without the consent of the Attorney-General, except such as the justice may think necessary by remand, or otherwise, to secure the safe custody of such person. (2.) In framing an indictment the same criminal act may be charged in different counts as constituting different crimes under this act, and upon the trial of any such indictment the prosecutor shall not be put to his election as to the count on which he must proceed. (3.) For all purposes of and incidental to arrest, trial, and punishment, a crime for which a person is liable to be punished under this act, when committed out of the United Kingdom, shall be deemed to have been committed in the place in which he, for the time being, is. (4.) This act shall not exempt any person from any indictment or proceeding for a crime

or offence which is punishable at common law, or by any act of Parliament other than this act, but no person shall be punished twice for the same criminal act.

"8. (1.) Sections 78, 74, 75, 89, and 96 of the Explosives Act, 1875 (which sections relate to the search for, seizure, and detention of explosive substances, and the forfeiture thereof, and the disposal of explosive substances seized or forfeited), shall apply in like manner as if a crime or forfeiture under this act were an offense or forfeiture under the Explosives Act, 1875. (2.) Where the master or owner of any vessel has reasonable cause to suspect that any dangerous goods or goods of a dangerous nature, which, if found, he would be entitled to throw overboard in pursuance of the Merchant Shipping Act, 1873, are concealed on board his vessel, he may search any part of such vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel, and such master or owner, if he finds any such dangerous goods or goods of a dangerous nature, shall be entitled to deal with the same in manner provided by the said act, and if he do not find the same, he shall not be subject to any liability, civil or criminal, if it appears to the tribunal before which the question of his liability is raised that he had reasonable cause to suspect that such goods were so concealed as aforesaid.

"9. (1.) In this act, unless the context otherwise require, the expression 'explosive substance,' shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement. The expression 'Attorney-General' means Her Majesty's Attorney-General for England or Ireland, as the case may be; and in case of his inability or of a vacancy in the office, Her Majesty's Solicitor-General for England or Ireland, as the case requires. (2.) In the application of this act to Scotland, the following modifications shall be made: The expression 'Attorney-General' shall be deemed to mean the Lord Advocate; and in case of his inability or of a vacancy in the office, Her Majesty's Solicitor-General for Scotland. The expression 'petty sessional court-house' shall be deemed to mean the sheriff court. The expression 'felony' shall be deemed to mean a high crime and offense. The expression 'recognizance' shall be deemed to mean juratory caution. The expression 'justice' shall include sheriff and sheriff substitute."

## Supreme Court District of Columbia

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

THOMAS BANNAGAN

vs.

THE DISTRICT OF COLUMBIA.

AT LAW. No. 20,903.

{ Decided March 12, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. A municipal corporation is not liable for the consequences of a mere error of judgment in the plan or design of its public works; negligence in the choice of its agents or instrumentalities must be shown.
2. If a sewer when first constructed be of adequate capacity but subsequently becomes obstructed whereby damage ensues, no responsibility therefor attaches to the municipal authority except after notice and neglect to redress the evil.

THE CASE is stated in the opinion.

BIRNEY & BIRNEY and ROBT. J. MURRAY  
for plaintiff.

RIDDLE & MILLER for defendant.

Mr. Justice COX delivered the opinion of  
the Court.

This is an action brought to recover damages alleged to have been suffered by the plaintiff in his house and adjacent premises, in consequence of the accumulation of water in front of his premises caused by the insufficiency of the drain pipe or sewer provided by the authorities of the District for relieving that difficulty. The declaration sets out "that the plaintiff was and is the owner of lot 5, square 309, fronting on 12th street, between Q and R streets northwest, in Washington, and was and is a dealer in groceries in the building thereon, and prior to the injuries alleged his business was very profitable by reason of the large number of his customers, and was worth \$600 per annum.

That defendant caused the grade of Q street at its intersection with 12th street to be raised above the level of 12th street and of plaintiff's lot, whereby all water draining upon 12th street above Q street, which, by reason of the said raising of the grade of Q street, could find no outlet, formed large ponds in front of plaintiff's house; whereupon defendant caused a sewer to be laid along the north line of Q street and laid or constructed a certain other pipe, sewer or sewer trap on the north side of Q street at its intersection with the east side of 12th street and emptying into the sewer

first mentioned, which said pipe, etc., 'was designed by the defendant for the purpose of draining 12th street in front of plaintiff's property; yet plaintiff says that the defendant . . . negligently and unskillfully constructed or caused to be constructed said pipe, lateral sewer or sewer trap of such insufficient size and imperfect construction that the water 'on 12th street could not be carried off, and on or about January 15, 1876, and at a great many times since then, the water which collected on 12th street between Q and R streets, 'could not, by reason of the negligent and unskillful construction of the said sewer trap or lateral sewer, be carried off or drained into the said sewer, but on account of said deficient pipe was forced back and formed into large stagnant and ill-smelling pools or ponds in front of plaintiff's said store, thereby preventing convenient and dry access to the said store for plaintiff's customers,' causing his business to become utterly valueless and unprofitable by means of his diminished sales, and to the great inconvenience of plaintiff in his use, occupation and comfortable enjoyment of his said premises to his damage, \$1,500,"

The defendant pleaded "not guilty," and issue was joined.

The gravamen of the complaint, it will be seen, is, that the pipe was negligently and unskillfully constructed, or caused to be constructed of insufficient size, so that the water which collected could not, by reason thereof, be carried off or drained, and because of this insufficiency of the pipe, was forced back and remained in stagnant pools, &c. We have repeatedly held that a municipal corporation is not liable for the consequences of a mere error of judgment in the plan or design of its public works, but that it is incumbent on the plaintiff, who complains of injury, to show negligence in the choice of its agents or instrumentalities before a liability can be fixed upon the municipality for damages accruing to him. In this case there is a general charge of negligence and unskillful construction of pipe. When we come to look at the evidence, however, it seems to fall short of that level. The testimony of the witnesses is that a six-inch tile pipe was constructed, but that owing to the want of covering or protection it failed to carry off the water; that the pipe would have been much less likely to have become choked or stopped if the mouth had been raised four or five inches above the level of the gutter. In other words, the proof establishes nothing more than an error in the construction of this pipe, but it does not bring home to the defendant any delinquency in respect to care

and diligence in the choice of means for remedying the evil complained of. All that is said in this testimony may be true, and yet it may have been a matter of fair difference of opinion whether this pipe was more likely to be choked up with the mouth of it open or with a grating over it. It may have been a matter of experiment, and the proof shows that after the experiment was made, and complaint made to the defendant's engineer, the evil complained of was remedied, and the plaintiff has suffered nothing from it since. It seems, therefore, that the utmost that is established by this proof, if anything, is a mere error of judgment in the selection of the means by which the evil complained of here was redressed, and in that respect the proof fails to come up to the averments of the declaration.

There is another respect in which there seems to be a variance between the proof and the declaration. As we have already seen, the declaration first charges upon the defendant the duty of constructing lateral pipes of sufficient size to carry off the water shed upon the street; and the averment is that they negligently and unskillfully caused to be laid a pipe of such insufficient size and imperfect construction that the water could not be drained off. Now, to the contrary of all this, the proof shows explicitly that the pipe was of ample size to carry off the water; that as soon as the obstruction in the pipe was removed the water flowed off freely, and the plaintiff has not since suffered any annoyance,

The rule on this subject is, that if sewers and drains are originally of adequate capacity as at first constructed, and subsequently become obstructed, there is no responsibility therefor devolved upon the municipal authorities except after notice and neglect to redress the evil. In this case there is a general allegation that after frequent complaints to the defendant the evil was removed. But it is not proved clearly that any unreasonable delay took place in doing this, or that any injury was suffered by the plaintiff in consequence of such delay. But even if it had appeared in the proof, it is not the case made in the declaration. The real cause of the trouble in this case seems to have been an omission to provide some means of preventing the pipe from choking up. Now, if that is alleged in the declaration at all, it is in the general allegation of unskillfulness and negligence in the construction of the pipe. But as we have already shown, the evidence on this subject proves nothing in the world but an error of judgment, and does not bring home to the defendant any negligence in anticipating and

providing for this evil. If it is not embraced within this general averment of negligence in the construction, then the evil complained of does not appear in the declaration at all, and we think the court below were right in holding that upon the proof a case was not made out such as was averred by the plaintiff. That was the statement in the instructions of the court below to which exception was taken. The ruling of the court below, therefore, is affirmed.

#### Law in Australia.

The full court sitting in Melbourne, Colony of Victoria Australia, on October 8th, gave its reserved judgment in the appeal case of *The Band of Hope and Albion Consols v. The Young Band Extended Company*. A dispute had arisen in regard to the right to mine upon a block of land at Ballarat, adjoining the mines of the two companies. The plaintiffs obtained from the Full Court an order compelling the defendants, who were working on the disputed land, to keep the stone taken therefrom separate from the other stone, and pay the surplus value of it into a bank at Ballarat. The defendants, however, mixed the stone taken from this mine with other stone, alleging that it was impossible to keep them separate. The plaintiffs appealed to the Full Court to compel the defendants carry out the former order. The court, in giving judgment, said that the defendants had by their action annihilated all evidence of the value of the stone taken from this particular mine, as the mixing of the stone had rendered it impossible to determine how much of it belonged to each claim. Under these circumstances the court allowed the appeal with costs, the defendants to be permitted to continue working the land in accordance with the former order, upon payment into court of the value of the gold taken from both mines.—*Ill. Australian News*.

ON A BILL for the assignment of dower, Kelso's appeal, the Supreme Court of Pennsylvania decided, through the Chief-Justice (Mercer): 1. That the sale of a bankrupt's real estate in pursuance of a decree in bankruptcy, does not divert the dower of the bankrupt's wife. 2. A statement to the purchaser by the widow that he need not hesitate to buy the land from any fear that she would claim her dower right therein, is not binding on her.

THE official returns of the value of tobacco consumed in France give for cigars, 60,500,000 francs; cigarettes, 16,000,000; chewing tobacco, 9,000,000; and 278,000,000, for ordinary smoking tobacco.

## United States Supreme Court.

No. 408.—OCTOBER TERM, 1882.

THE UNITED STATES, Plaintiff,

vs.

EDWARD P. CURTIS.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Eastern District of Missouri.*

Prior to the passage of the act of February 26, 1881, (21 Stat., 352) notaries public, in the several States, had no authority to administer to officers of national banking associations, the oath required by section 5,211 of the Revised Statutes of the United States.

An indictment against an officer of a national bank under section 5,392 for a wilfully false declaration or statement in a report made under section 5,211, verified by his oath administered by a notary public, of a State prior to the act of February 26, 1881, cannot be sustained. By section 5,392 it was meant that the oath must be permitted or required by at least the laws of the United States, and be administered by some tribunal, officer, or person authorized by such laws to administer oaths in respect of the particular matters to which it relates.

Mr. Justice HARLAN delivered the opinion of the Court.

This case comes before us on a certificate of division as to certain questions of law arising in a criminal prosecution against Edward P. Curtis, based upon sections 5,211 and 5,392 of the Revised Statutes of the United States.

The first of those sections provides that every national banking association "shall make to the comptroller of the currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signatures of at least three of the directors. Each such report shall exhibit in detail, and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the comptroller shall be published in a newspaper where such association is established," &c.

Section 5,392 provides that: "Every person who, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully

and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed."

The wilfully false declarations or statements which the defendant is charged to have made are contained in several written reports transmitted to the comptroller of the currency by the National Bank of the State of Missouri, in St. Louis, in pursuance of section 5,211, and to the truth of which declarations or statements, Curtis, as cashier of that bank, made oath before a notary public within and for the county of St. Louis in that State. These declarations or statements relate to the condition of the bank as to loans, discounts, checks, cash items, overdrafts, individual deposits, subject to checks, surplus fund, currency on deposit, and money due from that association to other national banks. The indictment contains five counts, which, as respects any matter now to be determined, do not substantially differ, except as to the several dates when the alleged oaths were taken. Those dates were July 18th and October 10th, 1876, and January 15th, January 26, and April 5th, 1877.

The controlling question is as to the authority of the notary to administer the oaths, upon the falsity of which the indictment is laid.

It is fundamental in the law of criminal procedure that an oath before one who has no legal authority to administer oaths of a public nature, or before one who, although authorized to administer some kinds of oaths, but not the one which is brought in question, cannot amount to perjury at common law, or subject the party taking it to prosecution for the statutory offense of wilfully false swearing. 1 Hawkins P. C., b. 1, ch. 27, s. 4, p. 430, 8th edit. by Curwood; Roscoe's Cr. Ev., 7th Amer. Ed., p. 817; 2 Whart. Crim. Law, § 2,211; 2 Arch. Crim. Pr. and Pl., 8th Ed., p. 1,722. If, therefore, Curtis, at the time the several oaths alleged to be false were taken, was not authorized by the laws of the United States to take them before a notary public, he cannot be proceeded against under section 5,392. The statute, in conformity with an established rule of criminal law, expressly declares that the oath must be taken before some "competent tribunal, officer or person." This does not necessarily mean that the tribunal by which the oath is admin-

istered shall have been created by the government which required it to be taken, nor that the officer who administers it shall be an officer of that government. But the statute does mean that the oath must be permitted or required, by at least the laws of the United States, and be administered by some tribunal, officer or person authorized by such laws to administer oaths in respect of the particular matters to which it relates. So that the underlying question is whether the notary public, whose commission is from the State, was, at the respective dates of the oaths taken by Curtis, authorized by the laws of the United States to administer such oaths.

This question we are constrained to answer in the negative. We are not aware of any act of Congress which gave such authority to notaries public in the different States at the several dates given in the indictment. The assistant attorney-general insists that such authority may be found in section 1,778 of the Revised Statutes, which declares: "In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or territory, or in the District of Columbia, they may also be taken or made by or before any notary public duly appointed in any State, district or territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace."

The authority of the notary to administer these oaths to Curtis cannot be derived from that section, unless, at the dates in question, they could, under the laws of the United States, have been taken before justices of the peace in Missouri. But the latter officers had no such authority by any federal statute to which our attention has been called, or which we are able to find. Section 1,778, so far as notaries public are concerned, embodies the substance of similar provisions in the acts of September 16, 1850, (9 Stat., 458), July 29, 1854, (10 Stat., 315, § 1), and June 22, 1874, (18 Stat., 186, § 20.) But nothing in these acts, even if they remained in force after the adoption of the Revised Statutes, supports the authority exercised by the notary public who administered these oaths to defendant.

Counsel for the United States further insists that a proper construction of section 1,778 will authorize a notary public in any State to administer oaths to officers of national banking associations, when making reports to the comptroller of the currency, if justices of the peace may lawfully do so in this District.

But in our judgment no such interpretation of that provision is admissible. What Congress intended, by that section, was to give notaries public in their respective States the same authority, in the administration of oaths, as are given, under the laws of the United States, to justices of the peace in the same States; and to notaries public in this District the same authority, in administering oaths, which, under the laws of the United States, might be exercised by justices of the peace in this District. We have seen, however, that justices of the peace, in the several States, had not been given such authority by any provision in the Revised Statutes, or by any act of Congress prior to their adoption.

Nor can any support for the indictment be derived from the act of August 15, 1876, (19 Stat., 206), which declares "that notaries public of the several States, territories and the District of Columbia, be, and they are hereby, authorized to take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as commissioners of the United States circuit courts may now lawfully take or do."

The power of commissioners of the circuit courts did not, at the passage of that act, extend to the taking of oaths to reports by officers of national banks. They could take affidavits when required, or allowed in any civil cause in a circuit or district court; Rev. Stat., sec. 945; act of February 20, 1812, (2 Stat., 679, §1); act of March 1, 1817, (3 Stat., 350); or administer oaths where, in the same State, under the laws of the United States, oaths, in like cases, could be administered by justices of the peace; Rev. Stat., §1,778; or they could take evidence, affidavits and proof of debts in proceedings in bankruptcy; Rev. Stat., §5,003, §5,076; acts of March 2, 1867, (14 Stat., 527), July 27, 1868, (15 Stat., 228, §5), and June 22, 1874, (18 Stat., 186, §20.) But the authority of commissioners did not extend to such oaths as were administered to Curtis.

Our attention is called by counsel for the Government to U. S. v. Bailey, 9 Pet., 238. That case, it is claimed, furnishes ample ground for an implication that the notary public who administered the oath in this case was fully empowered to do so. We do not so interpret that decision. That was an indictment for false swearing. It was based upon an act of Congress which provided that if any person shall swear or affirm falsely touching the expenditure of public money, or in support of any claim against the United States, he should, upon conviction, suffer as for wilful,

corrupt perjury. The alleged false oath was administered before a justice of the peace for the Commonwealth of Kentucky. It was admitted that there was no statute of the United States expressly empowering a justice of the peace to administer the oath taken by Bailey. But the authority of that officer was sustained upon the ground that the Secretary of the Treasury had previously, and as incident to his duty and authority under an act of Congress, established a regulation permitting affidavits in support of claims against the United States to be made before justices of the peace. Except for that regulation the court, it is manifest, would not have sustained the indictment in Bailey's case.

The conclusion, therefore, is not to be avoided, and it will accordingly be certified to the court below, that the alleged false oaths of the defendant were not taken before an officer competent, at the time, under the laws of the United States, to administer them. The absence of such authority in notaries public seems to have been recognized by Congress when it passed the act of February 26, 1881, (21 Stat., 352), declaring "that the oath or affirmation required by section 5,211 of the Revised Statutes, verifying the returns made by national banks to the comptroller of the currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification, as contemplated by said section 5,211: *Provided*, that the officer administering the oath is not an officer of the bank."

What has been said renders it unnecessary to consider any other question of law certified by the judges of the circuit court.

NO. 164.—OCTOBER TERM, 1882.

HARRY STUCKY, Assignee in Bankruptcy of Ben. Melter, Appellant,

v.

THE MASONIC SAVINGS BANK AND JACOB KRIEGER, SR.

*Appeal from the Circuit Court of the United States for the District of Kentucky.*

The doctrine of the case of Grant v. Bank, 97 U. S. R., 80, that a creditor dealing with a debtor whom he may suspect to be in failing circumstances, but of which he may have no sufficient evidence, may receive payment or security without violating the bankrupt law, affirmed.—ED.

Mr. Justice MILLER delivered the opinion of the Court.

This suit originated in a bill in equity

brought in the district court by Stucky, as assignee of Melter, a bankrupt, against the bank and against Jacob Krieger, Sr., for the purpose of having two mortgages made by the bankrupt declared void, and the real estate covered by them sold free of the lien of those mortgages. The ground of this relief is the allegation that the mortgages were made by Melter when insolvent, and were preferences in contemplation of bankruptcy, void by the bankrupt law, and that, by virtue of the bankrupt proceedings, commenced within two months after they were made, they are void.

The case was decided in favor of the assignee in the district court, but on appeal the circuit court reversed this decree and dismissed the bill.

It is shown that both mortgages were taken to secure renewal notes for pre-existing debts, one note and mortgage being made to the bank directly, and the other to Mr. Krieger, who was president of the bank, the note being indorsed by him to the bank. They were for \$6,000 each.

The whole matter turns upon the question whether Krieger, who acted almost alone for the bank, had reasonable ground to believe that Melter was insolvent at the time the mortgages were made.

The district judge, who decided that he had such reasonable ground, does not seem to have given due weight to the principles of the case of *Grant v. The National Bank*, decided by this court, and reported in 97 U. S. R., 80, a case which was fully considered, and which has since been followed by us as a leading one on the subject.

That case establishes the doctrine that a creditor dealing with a debtor whom he may suspect to be in failing circumstances, but of which he has no sufficient evidence, may receive payment or security without violating the bankrupt law. "He may be unwilling to trust him further; he may feel anxious about his claim and have a strong desire to secure it, yet such belief as the act requires may be wanting. Obtaining additional security or receiving payment of a debt under such circumstances is not prohibited by law."

In the case before us the testimony of Krieger himself, as the one who best knows the strength of the suspicion (if any) on which he acted, and what evidence was before him, must chiefly control.

We have examined his deposition very carefully. We think it bears the impress of candor and it negatives the idea that he had reasonable ground to believe Melter insolvent, or that he actually did believe it.

The evidence, outside of this, as to the

various estimates of the value of Krieger's property and the amount of his debts, while it shows that Melter was probably insolvent, does not show that this was known to Melter himself or to Krieger, or that the latter had reasonable grounds to believe him so.

It would serve no useful purpose to give in this opinion a full examination of all the evidence. It is sufficient to say that in looking it all over we concur with the circuit judge, and his decree dismissing the bill is affirmed.

**The Funeral Expenses of a Married Woman are a Proper Charge on Her Separate Estate.**

HELMKAMP, KAUFMAN & Co., v. J. H. H. KATER, Administrator of Anna Steinman, deceased.

MAXWELL, J.—It appears from the agreed statement of facts, upon which this case is submitted, that the plaintiffs, who are undertakers, furnished the materials and performed the services necessary for the funeral of Anna Steinman, a married woman; that they did this upon the request of the husband; that he has paid a portion of the bill, but that he has neglected or refused to pay the balance; that he has no property, and that she had, and has left, a separate estate.

It is claimed on the part of the plaintiffs, that they furnished the material and performed the services on the credit of her separate estate, and that the estate is liable to them, and it is claimed on the part of the defendant, that the husband of the decedent, and not her estate, is liable for the bill of the plaintiffs.

Section 6090, Revised Statutes, provides that an administrator or executor shall pay "first—the funeral expenses, those of the last sickness, and the expenses of administration," and it might be argued that this law of distribution applies to all cases where there is any estate to be distributed, and that the rule applies to the estate and not to the person.

The defendant claims that at common law the husband was liable for the funeral expenses of the wife, and that, as no express statute on that subject has been enacted, the common law rule still applies. I think the application of that rule depends upon the facts of the case to which it is sought to be applied. At common law, the husband was liable for the funeral expenses of the wife, even if she were living apart from him, upon the same principle that he was liable for necessities furnished her, i. e., to prevent her from becoming a charge on the public, or falling into destitution, and any one might



furnish her necessities while she lived, and decent burial after death and recover from the husband the amount so expended, as a matter of public policy: *Ambrose v. Kerri-son*, 10 C. B., 776; *Bradshaw v. Beard*, 12 C. B. (N. S.), 844; *Cunningham v. Reardon*, 28 Mass., 558.

It will be found, however, on examination of these cases, that they were all cases in which the wife had no estate, but was wholly dependent on her husband.

That a different rule from the foregoing applied where the wife had a separate estate, may, I think, be fairly inferred from another class of cases. In *Gregory v. Lockyer*, 6 Mod., 90, the wife had left a separate estate, and the husband, who was her executor, had charged her funeral expenses against that separate estate. The court permitted the account to stand. In *Bertie v. Lord Chesterfield*, 9 Mod., 30, it was sought by the devisee of the husband to cast the funeral expenses of the wife on her executor, on the ground that she had left a separate estate, but the court refused, because it appeared that she had devised away all her separate estate, so that the executor took nothing.

But the courts have gone even further, under the common law. In *Willeter v. Dobie*, 2 Kay & J., 647, it was held that where a married woman had made her funeral expenses a charge on her separate estate, the husband might recover for funeral expenses paid by him. In *Parker v. Lewis*, 2 Dev. (N. C.) 21, the funeral expenses are held to be a charge on the estate of the decedent. In *Patterson v. Same*, 59 N. Y., 588, it is held that when the owner of some estate dies, it is the duty of the estate to bury him. In *Ellis v. Ellis*, 12 Pick., 178, it was held that the funeral expenses of a widow were a charge on her estate and not on that of her deceased husband. In *Lawall v. Kreidler*, 3 Rawle, 300, it was held that the husband's estate was not liable for the funeral expenses of the widow, it appearing that she had left some separate estate to her children.

The rule of the common law as to the capacity of the wife to hold and use separate property has been materially changed, not only in many of the United States, but also in England. In our State the wife may acquire and hold property, both real and personal, as if she were a *feme sole*, and the statutes, and the decisions of our Supreme Court, have extended her liability until her separate estate will be bound for any obligation which either appeared to have been incurred for the benefit of her separate estate, or which the testimony shows was incurred

upon the faith and credit of her separate estate. In short, the difference between the rights and liabilities of a married woman and a *feme sole* is mainly in the procedure. As I have said, the rule is much the same in other States and in England. In *McCue v. Garvey*, 14 Hun., 552, the husband was allowed to charge the funeral expenses, which he had paid, against his wife's separate estate. In *Hodson v. Williamson*, 43 Law Times Rep., 676, it was held that as to all others than the husband, the funeral expenses of a married woman should be a charge on her separate estate, and the court, in this last case, seems to imply, that this had long been the rule in England. See also *Schouler on Husband and Wife*, sections 412-413, where the subject is discussed at some length.

My conclusion is that the provision of section 6090, R. S., quoted above, applies as well to the estate of married women, as to others, and the judgment will therefore be for the plaintiff. [Hamilton County, O., Common Pleas.]—*Chicago Legal News*.

#### NOTES OF RECENT DECISIONS.

*Debtor and creditor: Recovery of property transferred on a contract malum prohibitum.*—In the case of a contract which is merely *malum prohibitum*, the party receiving may be made to refund to the person from whom it has received property for the unauthorized purpose, the value of that which it has actually received. [The City of Parkersburg v. Brown, S. C. U. S., Oct. Term, 1882.]

*Divorce: in one state when bar to in another.*—Although marriage is a *status*, and every State has the right to fix, regulate, and control the same as to every person within its jurisdiction, even though one of the parties may at the time actually reside in another State, yet a judgment of divorce granted in another State, under statutes making jurisdiction dependent entirely upon the residence there of the party applying for a divorce, at the suit of a husband against a wife who resides in this State, and who was not personally served with notice, and did not appear in the action, but was ignorant of its pendency until after judgment was rendered, is not a bar to a subsequent action by such wife in this State for divorce, alimony allowance, and a division of the property of such husband situated within this State, especially where such foreign judgment was based upon an alleged cause of action which was false in fact. [Supreme Court of Wis., *Cook v. Cook*, 3 Ohio L. J. 369]



**Contract: Agreement to pay salesman share of profits; construction of; interest on loans.**—A contract for the employment of a salesman for a series of years provided that the salesman should be paid for his services annually a sum equal to one-fifth of the net profits of the business, which sum it was guaranteed should not be less than \$7,500 a year, and that at the end of each year the gross profits of the business should be ascertained, from which should be deducted the total expenses and losses incurred in such year in the business of the employers, and that a sum which should be equal to one-fifth of the residue should be the compensation, and provided further that the house should be charged with ten per cent. on the actual cost of certain goods manufactured elsewhere, on four months' time, with interest, and that the salesman was not to be regarded as a partner in the business. *Held*, that in the absence of any special agreement, or custom having the force of law, to the contrary, the employers could not charge in the expense account the interest paid by them on temporary loans for money used in the business, and that it was no concern of the salesman whether his employers had the ready means to carry on the business, or would be compelled to borrow the whole or any part of it for that purpose.

Where a salesman in a wholesale house is employed to be paid as his salary or compensation a sum equal to one-fifth of the net profits of the business of his employers at the place where he is employed, with a guaranty that such sum shall be equal to \$7,500 per year, the compensation so to be paid him will not be estimated as a part of the expenses to be deducted from the gross profits of the business. A different construction would require the salesman to pay one-fifth of his own salary after reaching \$7,500. [Selz v. Buel, 105 Ill.]

**Corporation: Powers of.**—The charter of a corporation, read in connection with the general laws applicable to it, is the measure of its powers, and a contract manifestly beyond those powers will not sustain an action against the corporation. But whatever under the charter and other general laws, reasonably construed, may fairly be regarded as incidental to the objects for which the corporation is created, is not to be taken as prohibited. [Green Bay Railroad Co. v. Union Steamboat Co., S. C. U. S., Oct. Term, 1882.]

**Partnership.**—While a partner may confess judgment in the firm name for a firm debt, yet he has no right without the consent of his partner to confess such a judgment, and so

subject the firm assets to execution for his own individual debt, and that although the said debt was contracted to enable him to raise money to pay his proportion of the firm's capital. Such a judgment is fraudulent as to creditors, and may be attacked collaterally by judgment or execution creditors of the firm, even after the court has refused to open the judgment on application of the partner who did not join in its confession, and although the creditors' judgments were not obtained until after levy on the confessed judgment. [Supreme Court of Penn., McNaughton's Appeal, 15 Rep., 474.]

**Homestead Exemption.**—A homestead, exempt from execution, under the laws of a State, will be held exempt, even as to a debt due the United States. [Supreme Court of the United States, Fisk v. O'Neil, opinion by Matthews, J., October term.]

**Assignment for the benefit of creditors: Preference of a wife as creditor.**—A husband borrowed money from his wife upon the express promise to repay it. He became insolvent, and in a deed of trust for the benefit of creditors, he preferred his wife to the extent of her claim. The other creditors opposed this preference, but the Court of Appeals of Maryland decided the case—Crane v. Barkdoll—against them. Judge Miller, in the opinion, said: A wife may become a creditor of the husband, and the provision of the code that property shall not pass to her from him in prejudice of the rights of creditors, was never intended to prohibit him from paying or devoting his property to the payment of a debt due to her. If she is, in fact, such creditor, the law regards her rights with as much favor as those of other creditors.

The reduction of the tariff this year will amount to \$70,000,000.

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## The Courts.

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### U. S. Supreme Court Proceedings.

APRIL 11, 1883.

The following gentlemen were admitted to practice during the past week:

Wm. G. Wilson, of New York; Chas. B. Redick, of Omaha, Neb.; Harrington Putnam, of New York City; Dennis D. Kane and Arthur A. Birney, of Washington, D. C.; Henry B. O'Reilly, of Denver, Col.; Wm. G. Boelker, of Providence, R. I.; Thos. Hart, jr., of Philadelphia, Penn.; Joseph G. Parkinson, of Cincinnati, Ohio; James H. May, of Washington, D. C.; Francis T. Chambers, of Philadelphia, Penn.; R. S. Morrison, of George-

town, Colorado; Henry K. Hawes, of Holyoke, Mass.; Fabius H. Bushee, of Raleigh, N. C.; George C. Teall, of St. Claire, Wis.; John G. Elliott, of Chicago, Ill.; James E. Gallaway, of Virginia City, Montana Ter.; Enoch M. McKay, of Bardstown, Ky.; Theodore W. Tallmadge, of Washington, D. C.; Hosea B. Moulton, of Washington, D. C.; T. L. Skinner, of San Francisco, Cal.; Henry L. Howe, of Oswego, N. Y.; John B. Puryear, of Paducah, Ky.; Charles B. Stuart, of Lafayette, Ind.

No. 240. The United States v. Thomas Ambrose, and

No. 241. The Illinois Central R. R. Co. v. The People of the State of Illinois. Argued.

APRIL 12, 1883.

No. 243. The First National Bank of Xenia v. D. M. Sewart et al., administrators, &c. Argued and submitted.

No. 244. The Omaha Hotel Co. et al. v. Augustus Kountze et al., and

No. 247. Augustus Kountze et al. v. The Omaha Hotel Co. et al. Argued.

APRIL 13, 1883.

No. 1206. A. P. Tutton, collector, etc., v. A. M. Vite et al. Argued.

No. 245. Howard County v. The Central Nat. Bank of Boonville, Mo. Argued and submitted.

No. 249. S. V. Tredway et al. v. C. W. Sanger. Argued and submitted.

No. 250. The Adriatic Fire Ins. Co. et al. v. John P. Treadwell. Argued.

No. 252. Mary E. Myers, widow, &c., v. Frederick J. Swann et al. Argued and submitted.

APRIL 16, 1883.

No. 231. Thos. J. Wood v. The United States. From U. S. Court of Claims. Judgment affirmed. Opinion by Mr. Justice Blatchford.

No. 180. Jas. S. Wilkins v. Semple Ellett, administrator, &c. To C. C. U. S., W. D. Tenn. Judgment reversed and cause remanded. Opinion by Mr. Justice Gray.

No. 218. C. F. Hampton, administrator, &c., et al. v. J. L. Phipps. From C. C. U. S., D. of South Carolina. Decree reversed and cause remanded. Opinion by Mr. Justice Matthews.

No. 206. The Missionary Society of the Methodist Episcopal Church v. Dallas City. From C. C. U. S., D. of Oregon. Decree affirmed. Opinion by Mr. Justice Woods.

Nos. 207 and 208. The Missionary Society of the Methodist Episcopal Church v. James K. Kelly et al. From C. C. U. S., D. of Oregon. Decrees affirmed. Opinion by Mr. Justice Woods.

No. 1043. The City of Quincy v. Mary Cooke, executrix, &c. To C. C. U. S., S. D. of Illinois. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 5. Original Ex parte. In re J. B. Wall. Petition for mandamus denied. Opinion by Mr. Justice Bradley.

No. 234. J. H. Rountree v. E. F. Smith et al. To C. C. U. S., W. D. of Wisconsin. Judgment affirmed. Opinion by Mr. Justice Miller.

No. 214. The Little Miami, Columbus & Xenia R. R. Co. v. The United States. To C. C. U. S., S. D. of Ohio. Judgment reversed and cause remanded. Opinion by Mr. Chief-Justice Waite.

No. 223. Richard S. Allen v. Wm. N. McVeigh. To Sup. Ct. of Appeals of Virginia. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 226. John S. Farlow, receiver, &c., v.

Sylvanus Kelly. From C. C. U. S., N. D. of Ohio. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 227. J. D. Wright et al. v. The United States. To C. C. U. S., M. D. of Tenn. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 230. Charles E. Lewis v. The City of Shreveport. To C. C. U. S., D. of Louisiana. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 293. The U. S. v. Joseph W. Fisher. From U. S. Court of Claims. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1229. The City of New Orleans v. The State, ex rel. Henry Shepherd. Motion to dismiss or affirm submitted.

APRIL 17, 1883.

No. 255. Wm. P. Sinclair & Co. et al. v. Beatrice M. Cooper, widow, etc., et al., and

No. 257. Robert L. Downton v. The Yaeger Milling Co. Argued.

APRIL 18, 1883.

No. 258. J. J. Manning et al. v. The Cape Ann Isinglass and Glue Company et al. Argued.

APRIL 19, 1883.

No. 259. The Mayor, &c., of the City of Savannah, v. The U. S., ex rel. Eugene Kelly; and

No. 260. The Mayor, &c., of the City of Savannah, v. The U. S., ex rel. A. M. Martin; and

No. 261. W. J. Hawkins et al. v. Grinfill Blake et al. Argued.

APRIL 20, 1883.

No. 262. John J. Gilfillan v. The Union Canal of Penna. Argued.

No. 263. J. A. Hawley, County Clerk, Lee County, Ill., v. The U. S. ex rel. J. H. Fairbanks et al. Submitted.

No. 266. Samuel Clark, general treasurer, et al., v. G. M. Barnard, assignees, &c. Argued.

APRIL 23, 1883.

No. 213. M. L. Ensminger v. J. C. Powers et al. From C. C. U. S., W. D. of Tenn. Decree affirmed. Opinion by Mr. Justice Blatchford.

No. 212. John H. Starin v. The Schooner Jesse Williamson, jr., &c. From C. C. U. S., S. D. of New York. Dismissed for want of jurisdiction. Opinion by Mr. Justice Blatchford.

No. 1206. A. P. Tutton, collector, &c., v. Vite Brothers. To C. C. U. S., E. D. of Penna. Judgment affirmed. Opinion by Mr. Justice Gray.

No. 215. L. J. Davis et al. v. The State of South Carolina. To S. C. of South Carolina. Judgment reversed and cause remanded. Opinion by Mr. Justice Matthews.

No. 238. John B. Slawson v. The Grand Street, &c., R. R. Co. From C. C. U. S., E. D. of New York. Decree affirmed. Opinion by Mr. Justice Woods.

No. 243. Howard County v. The Central Nat. Bank of Boonville, Mo. To C. C. U. S., W. D. of Missouri. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 192. Mills County v. The Chicago, &c., R. R. Co. et al. To Supreme Court of Iowa. Judgment affirmed. Opinion by Mr. Justice Bradley.

No. 191. Mills County v. The Burlington & Missouri R. R. Co. Judgment affirmed. Opinion by Mr. Justice Bradley.

No. 202. The Baltimore & Potomac R. R. Co. v. The Fifth Baptist Church. To the S. C. Dist. of Col. Judgment affirmed. Opinion by Mr. Justice Fields.

No. 240. The United States v. Thomas Ambrose. Certificate of division from the judges. C. C. U. S., S. D. of Ohio. Answered in the affirmative. Opinion by Mr. Justice Miller.

No. 249. S. V. Tredway et al. v. Charles W. Sanger. From C. C. U. S., D. of California. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 252. Mary E. Myers, widow, etc., et al., v. F. J. Swann et al. To C. C. U. S., E. D. of North Carolina. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 1229. The City of New Orleans v. The State ex rel. Henry Shepherd. Motions denied. Announced by Mr. Chief-Justice Waite.

No. 293. The U. S. v. Joseph W. Fisher. Judgment vacated. Announced by Mr. Chief-Justice Waite.

No. 14. Original Ex parte. Ex rel. State of Ill. Rule to show cause granted. Announced by Mr. Chief-Justice Waite.

No. 17. Original Ex parte. Ex rel. The Baltimore & Ohio R. R. Co. Leave granted to file petition for writ of mandamus.

No. 1244. The New Jersey Zinc Co. v. Charles W. Trotter. Motion to dismiss submitted.

No. 1081. John B. Gibson v. Charlotte Bruce. Submitted pursuant to thirty-second rule.

No. 856. D. A. Walden v. S. W. Knevals. Motions to dismiss and affirm submitted.

No. 206. Samuel Clark, general treasurer, &c., et al., v. G. M. Barnard et al., assignees, &c. Argued.

APRIL 24, 1883.

No. 267. The Phoenix Mutual Life Ins. Co. of Hartford, Conn., v. Elizabeth Kohenlein, administratrix, &c. Dismissed per stipulation.

No. 268. George H. Warren et al. v. William King et al. Argued.

No. 269. Edwin Davis v. The Flagstaff Silver Mining Co. of Utah. Dismissed under the 16th rule.

No. 270. The Karns Pipe Line Co. v. The Alleghany National Bank. Dismissed.

No. 272. The United States v. Bernard Lariviere et al., claimants, &c. Submitted.

No. 273. The District of Columbia v. Charles H. Ames, administrator, &c. Argued.

APRIL 25, 1883.

No. 1245. G. B. Hunt et al. v. D. P. Oliver. Rule granted, returnable next term.

No. 998. P. R. Bohlen v. R. Arthurs, assignee, &c. Writ of certiorari awarded.

No. 1251. Martin Ireland et al., commissioner, &c., v. The United States, ex rel. The Aetna Life Ins. Co. To C. C. U. S., S. D. of Ill. Docketed and dismissed.

No. 278. The District of Columbia v. C. H. Ames, administrator, &c. Argued.

No. 274. The State, ex rel. The New Orleans Gaslight Co., v. The Council of the City of New Orleans. Submitted.

No. 279. The Washington & Georgetown R. R. Co. v. The District of Columbia. Argued.

APRIL 26, 1883.

No. 280. Sarah E. Vance et al. v. Sarah E. Vance, executrix, &c., et al. Argued.

No. 286. The Wabash R. R. Co. v. John McDaniels. Argued.

No. 288. J. W. Scarborough, tutor, &c., v. John F. Pargoud. Submitted by the plaintiff in propria persona.

No. 294. Morton E. Post v. John B. Pearson. Submitted.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

APRIL 21, 1883.

24412. Herman Copperman v. Helman Kursman. Notes, \$1,500. Pliffs atty, H. W. Garnett.

APRIL 22, 1883.

24413. United States et al. v. A. U. Wyman. Mandamus. Pliffs atty, A. L. Merriman.

24414. John W. Hunter v. John H. Brown et al. Issues from probate.

24415. Jacob H. Kengla v. Frederick Weinsol. Notes, \$678.62. Pliffs atty, J. Forrest.

APRIL 23, 1883.

24416. A. T. Riddle v. Anton Fischer. Appeal. Defts attys, Gordon & Gordon.

APRIL 24, 1883.

24417. Isaac L. Gibbs v. O. B. Matteson et al. Account, \$3,300. Pliffs atty, John B. Sweat.

24418. Miller & Yager v. Harrison Williams. Account, \$644.69. Pliffs attys, Hanna & Johnston.

24419. T. A. Brown & Co. v. John Dowling. Account, \$616.76. Pliffs attys, Hagner & Maddox.

APRIL 27, 1883.

24420. Ryon & Earnshaw v. Harry A. Brown. Note, \$28. Pliffs atty, A. K. Browne.

APRIL 28, 1883.

24421. Edwin H. Neumeyer v. Bettie Reiss. Account, \$123.78. Pliffs atty, E. H. Thomas.

24422. Barbour & Hamilton v. John Dowling. Account—\$602.29. Pliffs atty, L. O. Williamson.

### IN EQUITY.—New Suits.

APRIL 21, 1883.

8529. Judson T. Cull v. Sarah A. Arnold et al. Interpleader. Com. sols., Gordon & Gordon.

APRIL 23, 1883.

8530. Patrick O'Donoghue v. John R. Dale et al. To vacate deed of trust. Com. sols., Elliot & Elliot.

8531. Francis D. Shoemaker et al. v. Edward Shoemaker et al. To sell. Com. sol., Chas. H. Oragin, jr.

APRIL 24, 1883.

8532. Thomas Knowles v. The Peabody Library Association et al. To marshal securities. Com. sol., O. M. Matthews.

APRIL 26, 1883.

8533. Dennis Fry v. Mary Fry. For divorce. Com. sol., R. J. Murray.

APRIL 27, 1883.

8534. Mari F. Seltz v. Alexander Seltz. For divorce. Com. sol., A. D. Wilcox.

APRIL 28, 1883.

8535. Margaret Chapman v. Burnett Chapman. For divorce. Com. sol., R. J. Murray.

8536. Jessie B. Cyfert v. Galen E. Green et al. Injunction. Com. sol., A. L. Merriman. Defts sol., O. A. Elliot.

8537. Charles E. Rhodes v. Moses Kelly et al. To enforce payment. Com. sols., Weaver and Carrington.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. April 24, 1883.

In the case of Daniel W. Middleton, Jr., Administrator of Jacob W. Ker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 178 H. J. RAMSDALL, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of April, 1883.

FRANCIS D. SHOEMAKER ET AL. } No. 2,381. Eq. Dec. 22.

EDWARD SHOEMAKER ET AL. }  
On motion of the plaintiffs, by Mr. Oragin, their solicitor, it is ordered that the defendants, Edward Lukens, Lewis A. Lukens, Mary T. Lukens, David Lukens, Ellen Lukens, Mary Lukens, Margaret A. Smedley, Albin M. Smedley and Mary E. Fowler, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. OUX, Justice.  
Truecopy. Test: 178 R. J. MAIZE, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of April, 1883.**

IN RE THE ALLEGED LUNACY } No. 8484. Equity Docket.

OF GEORGE BRENT.  
On motion of the petitioner, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the said George Brent, the alleged lunatic, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.  
By the Court. W. S. COX, Justice.  
A true copy. Test: 17-3 E. J. MINGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of S. Louisa Yeabower, late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of April, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.  
Given under my hand this 31st day of April, 1883.  
17-3 SAM. MADDOX, Administrator c. t. a.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. Erhard Mack, late of the City of New York, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.  
Given under my hand this 24th day of April, 1883.  
WM. PIERCE BELL, Solicitor. 17-3 JAMES H. MARR.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the matter of the Estate of Mary F. Woods, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Elizabeth M. Woods.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: 17-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the matter of the Estate of Abby L. Bodfish, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Frederick D. Sewall.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
J. W. & GEO. L. DOUGLASS, Solicitors. 17-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. L. Waldrup, late of the State of North Carolina, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of April next; they may otherwise by law be excluded from all benefit of the said estate.  
Given under my hand this 28th day of April, 1883.  
17-3 GEORGE F. APFLEBY.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM LORD, use of KIRBY, } No. 8422. Equity.  
v.  
PATRICK O'DONNOGHUE ET AL.

Upon the coming in of the trustees' further report hereto on this 16th day of April, A. D. 1883, it is, this 17th day of April, A. D. 1883, ordered, and decreed that the sales—  
To Z. Tobriner, of lot 37, in square No. 749, for .... \$ 173.77  
T. A. Daly W. 1/4 of lot 2, in square No. 536, for 1,400.00  
T. E. Waggaman, W. 1/4 lot 23, in square 545, for. 490.00  
T. E. Waggaman, E. 1/4 lot 23, in square 545, for.. 490.00  
A. Behrend, part of square 578, for..... 2,476.98  
T. D. Daly, E. 1/4 lot 13, in square No. 517, for.. 1,000.00  
and to A. Fauthuber, W. 1/4 lot 13, in square No. 517, for..... 1,710.00

be and the same hereby are finally ratified and confirmed unless cause to the contrary be shown on or before the 17th day of May next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the court. W. S. COX, Justice.  
JESSE MILLER, Solicitor. 16-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 17, 1883.**

In the case of Ferdinand Thelikhuhl, Executor of Gottlieb Rumpf, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
CHAS. A. WALTER, Solicitor. 16-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 14, 1883.**

In the matter of the Estate of Ann Phillips, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Lynch.

All persons interested are hereby notified to appear in this Court on Saturday, the 5th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
HANNA & JOHNSTON, Solicitors. 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph K. Barnes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.  
MARY T. BARNES, Executrix.  
WORTHINGTON & HEALD, Solicitors. 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keefe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.  
Witness: GEO. E. JOHNSON. BRIDGET M. KEEFE, her mark.  
Administratrix c. t. a.  
P. B. STILSON, Solicitor. 16-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of April, 1883.

**WILLIAM LORD, USE OF KIRBY, }** No. 8429. Eq. Doc. 22.  
v.  
**PATRICK O'DONOGHUE ET AL. }**  
Upon the coming in of the trustees' report of the sales of parts of lot No. 36, in the subdivision of lot 3 in square No. 618, it is this 6th day of April, 1883, ordered, that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of May next: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto. The report shows the sale of the east 26 feet by 100 thereof to W. F. Eaton for \$2,637.50; of the adjoining 25x100 feet to L. O. Creaser for \$2,535; of the adjoining 25x100 feet to O. T. Heinecke for \$2,425; of the adjoining 25x100 feet to Sephin Gatti for \$3,387.50; of the adjoining 25x100 feet (with the building thereon) to Lewis Behrens for \$2,500; of the adjoining 25x100 feet to J. T. Hawkins for \$2,412.50. The aggregate of said sales are reported to be \$14,887.50.

By the Court. **W. S. COX, Justice.**  
**T. JESUP MILLER, Solicitor.** 14-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 17th day of April, 1883.

**JOHN T. RICHARDS }** No. 24,343. Law Docket.  
v.  
**GEORGE WILSON. }**  
On motion of the plaintiff by Messrs. Ross & Dean, his attorneys, it is ordered that the defendant, George Wilson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
True copy. Test: 16-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 21st day of April, 1883.

**HARRIET E. MIDDLETON }** No. 8627. Eq. Doc. 23.  
v.  
**JOHN MIDDLETON ET AL. }**  
On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Benjamin Dant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **WALTER S. COX, Justice.**  
A true copy. Test: 16-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

**A. S. WORTHINGTON ET AL., Trustees, }** No. 8182.  
v. **O. A. REED, Administratrix, et al. }** Equity Doc. 22.  
The trustee in this cause having reported the sale of all the interest and estate of which William B. Reed died seized and possessed in original lot 15 and lots 23 and 24 of Bushrod W. Reed's subdivision, all in square 290, for the sum of \$176, cash: it is this 6th day of April, 1883, ordered and decreed that the said sale stand confirmed unless objections thereto be filed on or before the 6th day of May, 1883, provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before the said date.

By the Court. **WALTER S. COX, Justice.**  
A true copy. Test: 14-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jared L. Elliott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.  
16-3 **JOHN J. JOHNSON, Administrator.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Timothy O. Howe, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.  
16-3 **F. H. HOWE, Administrator.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 21, 1883.

In the matter of the Will of John M. Johnson, late of the District of Columbia, deceased, which will was filed herein on the seventeenth day of April, 1883.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by petition of Mary Virginia Wells, through her attorney, George F. Appleby. All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **WALTER S. COX, Justice.**  
Test: 16-3 **H. J. RAMSDALL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George O. Garrison, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of April, 1883.  
**ANN B. GARRISON, Executrix.**  
16-3 1441 S. st. n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of April, 1883.

**ELLET P. RICHARDSON }** No. 8,491. Eq. Doc. 22.  
v.  
**JAMES P. RICHARDSON. }**  
On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, James P. Richardson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. **W. S. COX, Justice.**  
True copy. Test: 14-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 3rd day of April, 1883.

**LAURA A. RICHARDS }** No. 8368. Eq. Doc. 22.  
v.  
**SAMUEL RICHARDS. }**  
On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered, that the defendant, Samuel Richards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **WALTER S. COX, Justice, &c.**  
A true copy. Test: 14-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 30th day of March, 1883.

**ELIZABETH MAHONEY }** No. 8,507. Eq. Doc. 23.  
v.  
**JOHN HENRY MAHONEY. }**

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **WALTER S. COX, Justice.**  
A true copy. Test: 14-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans' Court Business. April 6, 1883.

In the case of James S. Edwards and William H. Goods, Administrators c. t. a. of Anthony Buchly, deceased, the Administrators c. t. a. aforesaid have, with the approval of the court, appointed Friday, the 4th day of May, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrators c. t. a. will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

14-3 Test: **H. J. RAMSDALL, Register of Wills.**

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business. April 10, 1883.

In the case of Harvey Kennedy, Executor of James O. Kennedy, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 4th day of May A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 15-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 12th day of April, 1883.

HANSON EUSTRICH

No. 8512. Eq. Doc. 22.

MAKIE EUSTRICH.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant, Makie Eustrich, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. 15-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business. April 13, 1883.

In the matter of the Estate of Isaac Delano, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by James S. Delano.

All persons interested are hereby notified to appear in this court on Tuesday, the 1st day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
F. P. CUFFY, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 13th day of April, 1883.

WILLIAM F. BURY } No. 8516. Equity Docket.

ANNIE G. BURY.

On motion of the plaintiff, by Messrs. Roes & Dean, his solicitors, it is ordered that the defendant, Annie G. Bury, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Charles W. Utermoehle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

AUGUSTE W. UTERMÖEHLE, Executrix  
BRADLEY & DUVAL, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of Patrick H. Cooney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of April, 1883.

JOHN H. COONEY, Administrator.  
W. W. WISHART, Solicitor. 15-3

*Legal Notice.*

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Cecilla Cain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of March, 1883.

WILLIAM I. SIBLEY,

GEORGE F. T. COOK,

VOORHEES & SINGLETON, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a., on the personal estate of Eliza Bold, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1883.

JOHN H. BROOKS, Administrator c. t. a.

W. T. WISWALL, Solicitor. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Clara B. Brooks Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1883.

15-3 T. W. BARTLEY, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of William D. Aiken, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of April, 1883.

WILLIAM F. HELLEN, Administrator.

CRITTENDEN & MACKAY, Solicitors. 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of Catharine W. Garner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

15-3 ALEXANDER J. BENTLEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Elizabeth Decker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of March, 1883.

GEORGE O. WALKER,

OSCAR P. SCHMIDT.

WM. H. DENNIS, Solicitor. 14-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

DANIEL BROWN, Administrator.  
H. T. TAGGART, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, April 7, 1883.**

In the matter of the Will of Eltab Kingman, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Abner Kingman and William W. Boyce.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: 15-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, April 7, 1883.**

In the matter of the Will of Charles A. Friedrichs, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Friedrichs.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
LOUIS SCHADE, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, April 7, 1883.**

In the matter of the Estate of Ellen E. Ross, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Adelaide L. Dodson.

All persons interested are hereby notified to appear in this court on Friday, the 4th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CAMPBELL CARRINGTON, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, April 13, 1883.**

JESSE S. HERSEY  
(Married by the name of Carrie J. Brown.) No. 8510.  
Eq. Dec. 23.

EDWARD E. HERSEY.  
(Married by the name of William G. Taylor.)

On motion of the plaintiff, by Mr. Norris, her solicitor, and it appearing that a subpoena was duly issued and a return endorsed by the marshal of the District "not to be found," and that an affidavit of Jacob Oriser, a disinterested witness, is filed in the cause, that the defendant is a non-resident of the said District, and has been absent therefrom six months, it is ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 E. J. MILES, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Royal Parkinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

GEORGE B. PARKINSON, Administrator.  
15-3 75 West 4th street, Cincinnati, Ohio.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Vile, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of March, 1883.

ELIZABETH M. VIGLE,  
her  
mark.  
Administrator. 15-3

O. M. MATTHEWS, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Andrea de Frouville, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1883.

LUKE C. STRIDER, Administrator.  
H. E. DAVIS, Solicitor. 15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM LORD, use of KIRBY, } No. 4429. Eq. Dec. 22.  
v.

PATRICK O'DONOGHUE ET AL.

Upon the coming in of the trustees' second report, it is this 9th day of April, A. D. 1883, ordered, that the sale of lot No. 7, in the subdivision of lot No. 3, in square No. 576, and the sales of parts of lot No. 12 in square No. 745 be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of May next. This report states the amount of sales of said lot 17 in square No. 476 at \$6,316 90, and of sales in said lot No. 12 in square No. 745 at \$700: Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the Court. W. S. COX, Justice.  
A true copy. Test: 15-3 R. J. MILES, Clerk.  
JESUP MILLER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.**

In re estate of J. L. Waldrop.

In consideration of the petition of Phebe Warren Tayloe, herein filed, it is this seventh day of April, 1883, ordered by the court, that if H. W. Waldrop, the widow of J. L. Waldrop, or Robert J. Lindsay, the administrator of the said Waldrop, deceased, in the State of North Carolina, where the said Waldrop died, or some relation of the said Waldrop, deceased, or some larger creditor of the estate of said Waldrop than the petitioner, Phebe Warren Tayloe, do not apply for and obtain letters of administration on the estate of said J. L. Waldrop, in the District of Columbia, issuing thereupon from this court, on or before the twenty-seventh day of April, 1883, the prayer of the petition of said Phebe Warren Tayloe for letters of administration on said estate in this District to issue to her attorney, George F. Appleby, will be granted by this court: Provided, publication of this order be made in the Washington Law Reporter at least once a week before said date.

A true copy. 15-3 W. S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills D. C.



# Washington Law Reporter

WASHINGTON - - - - - May 5, 1883.

GEORGE B. CORKHILL - - - EDITOR

## Insanity as a Defence for Crime,

Read before the Medico-Legal Society, of New York, at Mott Memorial Hall, New York City, May 2, 1883, by GEORGE B. CORKHILL, United States Attorney for the District of Columbia.

I think it proper to say that I am here to night in obedience to a promise made to the president of your association over a year ago, but which I am compelled to fulfil at a most inopportune occasion. Owing to the fact that my official duties have required all my time and attention, it has been almost impossible for me to prepare a paper upon any subject containing sufficient merit to justify its presentation to you. The subject I have chosen; "INSANITY AS A DEFENCE FOR CRIME," is one with which I am familiar, and to the investigation of which I have been compelled to give much time and labor, and can therefore reasonably hope to merit some attention for the views I shall express.

To define with accuracy and precision the true meaning of the word insanity is a most difficult task. The ablest authors who have written upon the subject, the most learned physicians who have treated it, and the most eminent scientists—all differ as to the terms used to define it.

The more modern scientific researches have demonstrated that the line between sanity and insanity is as marked and distinct as is the line between health and any of the diseases with which the human frame is afflicted—that is that insanity is a disease acting upon the physical parts of the brain, producing the varied conditions and exhibitions of the mind so often seen. Dr. Bucknill, an eminent authority both in this country and Europe, says, in his Sugden Prize Essay, in answer to the question, "What is Insanity and Responsibility?"

"The difficulty of solving these questions has not only been humiliating to the proud in-

tellect of man, but has been attended with great practical inconvenience and with no inconsiderable or unfrequent danger of the exercise of human justice being perverted from the strict line of rectitude; of its being forced to deviate on the one side towards a mischievous and sentimental sympathy for peculiarities and infirmities of temper, or on the other towards an inflexible administration of penal and vindictive reprisals.

"The difficulty inherent in the question appears to depend upon the impossibility of establishing a strict relation between qualities of which the one is infinitely fluctuating and variable, the other is fixed and definite.

"Insanity is a condition of the human mind ranging from the slightest aberration from positive health to the wildest incoherence of mania, or the lowest degradations of cretinism. Insanity is a term applied to conditions measurable by all the degrees included between these widely separated poles, and to all the variations which are capable of being produced by partial or total affection of the many faculties into which the mind can be analyzed."

Dr. Fordyce Barker, of New York, defines insanity as a disease characterized by perversion from the normal rational action of the individual, of the mental faculties, or of the emotions and instincts. That the disease "is a departure from a healthy condition of the organs or tissues of the body, or a departure from the functions of healthy performance of the duties in that individual, of those organs and that in case of insanity there is always found either a change of substance brought by disease or a change in the healthy performance of the functions and duties which belong to some part of the body."

Dr. John P. Gray, of New York, a well-known and trustworthy authority, says that "insanity is a disease of the brain in which there is an association of mental disturbance, a change in the individual, a departure from himself from his own ordinary standard of mental action, a change in his way of feeling and thinking and acting."

It will readily be seen that these definitions, which in substance are the accepted views of



the leading scientific men both of this country and Europe, define insanity as a disease.

What has been termed moral insanity has no scientific recognition and should never be countenanced in a court of justice. But I am not here to discuss what insanity is, except as it is incidental to my subject of its use as a defense or excuse for crime.

So common has this defense become that in almost every case of atrocious and brutal crime, it is presented. And it is remarkable that there is scarcely a criminal but can find facts in his own life of physical or mental disturbance, or in that of some of his blood relations, from which men of eminence or scientific attainments readily demonstrate to juries that these facts, taken in connection with the atrocious and brutal character of the crime, indicate insanity. And this practice has grown so rapidly, and has been so successful in shielding from punishment many of the vilest criminals that ever infested society, that it has become a matter of the gravest importance that some remedy should be secured either by a modification of the laws of defense for crime or of punishment.

When a defendant charged with crime is placed upon trial, his plea of "not guilty" puts in issue almost every possible defense. The law presumes every man to be innocent and sane unless evidence to the contrary is produced, and in its extreme liberality it says to the jury, that they are to consider all the evidence in the case, and if they retain a reasonable doubt either as to the commission of the crime or to the responsible condition of the mind of the accused at the time, he is entitled to the benefit of that doubt and an acquittal.

It can readily be seen that shrewd counsel, backed by the opinion of expert witnesses in connection with any very atrocious crime, can readily raise a doubt in the mind of an unprofessional jury as to whether a sane man would have committed such an act.

I prosecuted a case within the past month where a man had brutally murdered his wife, had cut off her head, and had inhumanly slashed her face and head and body with his razor; and yet for days his counsel earnestly labored to show that he was insane, the basis of their evidence being that some sixteen years ago he had been struck by a policeman with his club; that it raised a lump the size of a hen's egg on his temple; that he was subject to dizziness and bleeding at the nose, and that he was unsociable; these, taken in connection with this awful crime, it was asserted, demonstrated insanity; and although the man

had attended to his daily labor, collected his earnings, and supported his family, a large amount of testimony, including at least one eminent expert, was presented to prove the irresponsibility of the defendant for the crime. That it was not successful in this case is a matter of congratulation, but that it was urged, and gravely and ably defended by persons of intelligence, at least demonstrates its dangerous character, for the criminal was as sane and rational as any man who ever committed crime.

The object of punishment in criminal cases by hanging and by confinement in the penitentiary is for the protection of society, and the deterring of others from like offenses, and there is little, if any, reformatory character connected with it, and how to administer it properly with a due regard to the rights of the individual citizen and to the community at large, has been the subject of the most varied discussion by men of eminence, experience and ability from the very organization of society. A very large and eminently respectable class of persons do not believe in capital punishment. They look with horror upon the law which demands the execution of a human being as a penalty for crime.

Without entering into a discussion of the merits of the question, I do not believe a more efficacious and just and proper punishment in every relation in which it can be considered can be found than the prompt execution of a criminal if found guilty of the crime which, under the law, merits that punishment.

The defense of insanity has become so common that it is not surprising that juries are beginning to look upon it with suspicion and the public with dread.

For illustration, a man ascertains that a person has outraged his family, violated his confidence and dishonored him in the dearest relations of life, he pursues and kills, and as a defense the jury are called upon to say the man was laboring under temporary insanity and not responsible to the law for his act, and ought, therefore, to be acquitted, and the prisoner returns to society, to his business and to civil and political honors. Why would it not be more creditable to our juries and more honorable to the administration of justice to let the jury say by their verdict that the justification for the crime was in the character of the act which provoked it, and not encourage and countenance this plea, by a verdict as contrary to their oaths and the law as would be the former. If they must apologize, let it be the more manly apology of open refusal to find a prisoner guilty under such serious provocation than to shield themselves behind a defense in

which neither they nor the community which they represent believe.

I do not think that insanity should ever be allowed as a plea of defense for crime on the trial of the prisoner under the indictment; not that I go to the extent of some writer whose communication I read in one of the law journals, "that the violent and bloodthirsty members of society should be put out of the way of further outrage without reference to the motive which induced them to disregard the right of life and property, the laws of man should be administered in the same spirit as one administered the laws of nature, a short-sighted man who has miscalculated his distance in attempting to swim a river, drowns, not because his motive is malignant, but because he has violated a law. Insanity, like blindness, or a 'wicked and abandoned heart,' is a defect of organization, and the highest triumph of human tribunals should be to administer to the survival of only the fittest."

It is of course shocking to the promptings of humanity to punish a man unquestionably insane, who has no conception of his crime, nor realizes its punishment, but if that is his condition he should be placed where he is treated with care and attention, but prevented from having the opportunity of committing other crimes. I have now on my docket for trial a case against a man who committed a most causeless and vindictive murder; he had been in the city for some time, boarding at a private house, was the inventor of a burglar alarm which he was endeavoring to introduce; his defense is insanity, and the physician of the asylum at the capital, who visited him at the jail, tells me that he is a cunning, malignant, but unquestioned, maniac, and I find, on examination, he was discharged from an asylum for the insane some years ago as entirely harmless. What is to be done with such a case? Shall the man be turned loose upon society again to commit other murders; for if acquitted of this crime on the ground of insanity, what assurance can there be that in a month he may not be again discharged? So that my candid opinion, resulting from a very large experience in the trial of these cases, is, that when a prisoner proposes to defend his crime on the ground of insanity, a jury should be specially chosen for their fitness to try the special plea, and if the prisoner, after trial, is found insane, he shall then be confined in an insane prison a certain time commensurate with the character of the crime, and if the verdict of the jury is in favor of his sanity, the plea shall not then be allowed upon the trial of the cause. I have

not the time to elaborate my views upon this point, nor to combat many of the constitutional and other objections that might be urged against it, but some such proceeding will, in my judgment, more certainly secure a just and fair examination and determination of this difficult problem than any other way. So long as it continues to be used as it is now, as a mere subterfuge to secure the acquittal of guilty criminals, it will receive, as it should, the condemnation of all who desire to see the law fairly and honestly executed.

It is not, I beg you to remember, a question whether the plea of insanity should be allowed as a defense for crime, but the devising of some means under the law by which its existence can be rationally and honestly determined.

It is the most astounding fact in the whole history of the administration of criminal jurisprudence, that within the past few years, nurtured by the vagaries and senseless theories of medical men on the subject, and supported by the testimony of so-called experts, almost every criminal, when arraigned, offers insanity as his defense, assured that he will have the assistance and support of eminent medical authors and experts. And as a consequence we have had just as many different kinds of insanity as we had crimes. The murderer was afflicted with homicidal or paroxysmal insanity; the thief was a kleptomaniac; the incendiary was a pyromaniac; the drunkard was a dyspso-maniac; the burglar and the ravisher had emotional and temporary insanity; and these afflicted criminals were to be pitied rather than punished.

But there is a class well known and recognized in every community, who by their erratic character, their vanity, their egotistical declaration, crowd themselves into every association, and by their arrogant assumption become prominent; they are not always men who wear long hair, nor women who wear short hair. I know no peculiar trade-mark by which they can at once be detected, but they are everywhere. You have them in your society unless the press misreports some of your discussions. They are doctors without patients, lawyers without clients, and ministers without parishes; without ever having done an honest day's toil, they crowd themselves into labor and trade organizations, and assume to be representative men; they are the most earnest in temperance and religious organizations; they clamor for position in every enterprise, having for its object any public reformation, they denounce crime on every public occasion, they say long prayers and affect great piety and virtue; and yet

they are the true representative traitors, murderers, thieves, ravishers, and scoundrels of communities, and when one of them commits a crime the entire race of vagabonds join in the clamor for his exemption from punishment on the ground of insanity. There has been a word coined of late years to designate these people, and they are called "*cranks*." They figure largely in the list of criminals charged with all grades of crime, and it is to them belongs much of the disgrace that has been brought upon the plea of insanity as a defense for crime. With them judgment and execution should be swift, sure and certain, for the escape of one of these men encourages the entire class to go on committing crimes for like notoriety and like exemption. They well know they commit crime and deserve punishment, and when the knife of justice falls upon one of their number, it strikes them with horror, but to every honest citizen it is a glad announcement that the law is supreme, and that its execution cannot be avoided by a miserable scoundrel asserting himself as a *crank*.

Nothing can be more slightly defined than the line of demarcation between sanity and insanity. Physicians and lawyers have vexed themselves with attempts at definition in a case where definition is impossible. As a writer has very aptly said, there has never yet been given to the world anything in the shape of a formula upon this subject, which may not be torn to shreds in five minutes by any ordinary logician. Make the definition too narrow, it becomes meaningless; make it too wide, the whole human race is involved in the drag-net. In strictness, we are all mad when we give way to passion, to prejudice, to vice, to vanity; but if all the passionate, prejudiced, vicious, and vain people in this world are to be locked up as lunatics, who is to keep the key of the asylum? As was very fairly observed, by a learned Baron of the Exchequer, when he was strongly pressed by this argument: "If we are all mad, being all madmen, we must do the best we can under such untoward circumstances. There must be a kind of rough understanding as to the forms of lunacy which can't be tolerated. We will not interfere with the spendthrift, who is flinging his patrimony away upon swindlers, harlots, and black-legs, until he has denuded himself of his possessions and incurred debt. We have nothing to say to his brother madman, the miser, who pinches his belly to swell the balance at his banker's—being 73 years of age, and without family,—but if he refuse to pay taxes, society will not accept his monomania as pleadable in bar."

Society must be protected, human life must

be safe, property must be secure, and the law must punish those who violate the sacred rights of each citizen to life and property. To do this with even justice it will not do to permit a criminal on account of the vagaries of an unbalanced intellect or moral nature, to escape punishment; if the disease of insanity really exists, then let that question be determined, not that the criminal may escape punishment, but that the punishment may be tempered in accordance with his physical and mental condition.

The subject of the best methods of determining in what cases and under what circumstances and in what manner insanity may be pleaded as a defense of crime is one deserving the careful attention of all. If what I have hastily said will attract your attention to the investigation of the subject and its importance, I shall have accomplished all that I could reasonably expect under the circumstances.

#### The Death Penalty.

Lord Justice Stephen is a man of considerable vigor of mind; but his intelligence is apt to degenerate into what has recently been frequently termed "*crankiness*." His views as to the extension of the death penalty tend in that direction. The reason why the death penalty should be maintained in political offenses of the graver sort, is, certainly, to some extent, to teach people "that to attack the existing state of society is equivalent to risking their own lives," but it is also because it is difficult to know what else to do with political offenders except to execute them. The moral turpitude of political offenses is very various. A man of the highest honor, cultivation and rectitude, may be, strictly speaking, a political criminal, and although a government is obliged to protect itself and its subjects against his enterprises, it would shock our ideas of decency to send him for life to pick oakum, or manufacture shoes in a blue and yellow garb of coarse freize. We therefore kill him, with great regret, as we slay the enemy we don't despise in battle. Again, there is a true idea in the *lex talionis*, but it is not the idea of revenge. It is that the penalty should bear some relation to the crime for which it is inflicted. Life for life, an eye for an eye, and a tooth for a tooth, strikes the imagination of the intending criminal, and warns him in his instant of power to be merciful. Thus flogging has been found to be a useful punishment for deeds of violence of an ignominious character. Possibly a punishment involving restitution would check crimes of fraud and theft.—*Montreal Legal News*.

## Supreme Court District of Columbia

SEPTEMBER TERM, 1882.

REPORTED BY FRANKLIN H. MACKNY.

BENJAMIN U. KEYSER, Receiver, &c.

v.

GEORGE BREITBARTH, Administrator, &c.

PROBATE. No. 236.

{ Decided March 30, 1883.

{ The CHIEF-JUSTICE and Justices MAC ARTHUR and COX sitting.

An appeal from the action of a justice of this court holding a Special Term for Orphans' Court business, is to be taken in the same manner as an appeal from the action of a justice holding any other special term of the court.

### STATEMENT OF THE CASE.

This cause came up on appeal from an order of the justice holding the special term of the court for Orphans' Court business. In behalf of the defendant it was moved to dismiss the appeal, because of non-compliance with the requirements of the Maryland Act of 1798, chap. 101, sub chap. 15, sec. 18.

N. H. MILLER in support of the motion :

The act of 1798 requires, in order to an appeal, the transmission of a transcript of the proceedings in the Orphans' Court, duly certified by the register of wills. Although the powers and jurisdiction of the Orphans' Court of the District were by act of Congress of June 21st, 1870, sec. 4 (16 Stats., 161), thereafter to be held by a justice of the Supreme Court of the District, holding a special term for that purpose; yet by sec. 5 of the same act all laws and parts of laws relating to the Orphans' Court, so far as applicable to the Supreme Court, are continued in force. The Maryland Act of 1798, chap. 101, sub-ch. 15, sec. 18, prescribing a mode of appeal, is applicable to the Supreme Court of the District; and appeals from the action of the justice holding the special term for Orphans' Court business are still to be governed and regulated thereby.

R. K. ELLIOTT and LEIGH ROBINSON, *contra* :

The 5th section of the act of Congress of June 21st, 1870, while continuing in force all such laws and parts of laws relating to the Orphans' Court as might be applicable to the Supreme Court, also repealed all such laws and parts of laws not so applicable. The section of the Maryland act is not so applicable, the mode of appeal thereby prescribed being

both cumbersome and wholly unnecessary. Moreover, Congress has, since the passage of the act of June 21st, 1870, recognized the decrees and orders in special term for Orphans' Court business of the Supreme Court of the District of Columbia (R. S. D. C., Sec. 930); and appeal from such decrees and orders lies in the usual way.

BY THE COURT: By virtue of the act of Congress of June 21st, 1870, this court has succeeded to all the powers and jurisdiction of the old Orphans' Court; which powers and jurisdiction are now exercised by a justice of this court holding a special term for that purpose. Such special term so held is, to all intents and purposes, exactly similar to any other special term of the court. The 18th section of sub-chapter 15, acts of Maryland, 1798, chapter 101, so far as it prescribes a process of appeal, is not applicable to this court; our machinery is much simpler and fully sufficient for the purpose. An appeal from the action of the justice holding the special term for Orphans' Court business is to be taken in the same manner as an appeal from the action of a justice holding any other special term of the court.

Motion overruled.

SAMUEL A. PEUGH

vs.

HENRY S. DAVIS.

EQUITY. No. 1713.

{ Decided October 21, 1882.

{ The CHIEF JUSTICE and Justices MAC ARTHUR and JAMES sitting.

In an account between mortgagor and mortgagee, where the latter has been in possession and is chargeable with a reasonable sum for use and occupation, that charge is to be determined, not by the value of the premises, but by the value of the use under all the circumstances. Therefore, where the use is valueless, no charge will be made against the mortgagee.

So held, in this case, where the Supreme Court of the United States directed a charge against the defendant of a reasonable sum for use and occupation by him of the premises in controversy, and this court finds the use of no value.

The parties to this cause were declared by the Supreme Court of the United States mortgagor and mortgagee respectively (96 U. S., 332); and that court in fixing the defendant's liability as mortgagee in possession, said: "The defendant should be charged with a reasonable sum for the use and occupation of the premises from the time he took possession in 1865, and allowed for the taxes paid and other necessary expenses incurred by him."

By the opinion and decree of the Supreme

Court the cause was remanded to this court, from which it had been appealed (see 2 Mac Arthur, 14), for a statement of the account between the parties accordingly. A reference was thereupon made to Thomas Hood, then auditor, who, on February 21st, 1880, reported to the court a charge against the defendant for use and occupation at six (6) per centum per annum on the assessed valuation of the premises by the District authorities for taxation.

To that report exceptions were taken by both parties, and, on November 5th, 1880, the court (Cox, J.), set the report aside and referred the cause to Jas. G. Payne, auditor, for a restatement of the account. In ordering this reference the court said: "The testimony taken in the cause shows that the premises were of no value to the defendant in respect of use and occupation, in the usual import of those terms: but it appearing to the court that under the circumstances of the present case, use and occupation may be held to include some reasonable compensation to the complainant for loss by reason of such use and occupation, whereby he was prevented from developing and disposing of the property, the auditor is directed that the defendant be charged, as representing such compensation, the annual general taxes, and also one or two per cent. per annum on the market value of the property, to be fixed by the auditor."

Obediently to this direction the auditor stated an account fixing the market value of the premises, and charging the defendant one per cent. thereon as for use and occupation.

To this report, also, exceptions were taken by both parties; and, on October 6th, 1881, the court (Wylie, J.) sustained the auditor in all particulars, except as to the market value, which was reduced from the auditor's estimate to the assessed valuation.

The cause came up to the general term on cross appeals; in disposing of which the court confined itself to but one of the controverted items, viz.: the amount to be charged the defendant on account of use and occupation. The statement of the arguments of counsel is accordingly confined to that particular.

MERRICK & MORRIS and J. J. JOHNSON for the complainant:

The direction of Cox, J., is a palpable attempt to nullify the opinion and mandate of the Supreme Court. The criterion of value as to use and occupation is the use which the owner, if in possession, might have made of the property—the profit which the owner, if at liberty to use it, might have made by a lease or sale of it.

A bill to redeem is in the nature of an equitable suit in ejectment; and the reasonable sum to be paid for use and occupation is analogous to the *mesne* profits that follow a suit in ejectment. In the latter a defendant, whether he has actually realized any profits or not, is liable for the rental value of the premises detained by him, or whatever might have been reasonably realized therefrom, either by himself or by the plaintiff. *Fears v. Merrill*, 9 Ark., 559; *Apalachicola v. Apal. Land Co.*, 9 Florida, 340.

That this was the intention and meaning of the Supreme Court is plain, because that court knew from the record that the property in question was unimproved city property, which ordinarily has no actual rental value and yields no profits. The Supreme Court must necessarily have meant, if its decision is to be allowed to have any meaning at all, that the defendant was to be charged as though he had rented the property from the complainant.

And there is no difference between the wrongful withholding of land and the wrongful withholding of money. The law allows damages for the latter in accordance with the legal rate of interest, and the same standard should be adopted for the former.

HENRY E. DAVIS, *contra*:

The defendant is to be charged with only the value of the use of the property; in no event should he be charged as for speculative or problematical damages, or damages of any kind, to the complainant. He is chargeable only for the natural and ordinary value of the use. 2 Pow. Mort., 1028; *Tucker v. Buffum*, 16 Pick., 46; *Bainbridge v. Owen*, 2 J. J. Marsh, 463.

The Supreme Court fixed no rate of charge against the defendant, nor does its language necessarily imply that a charge is to be made against him in any event. That court merely referred to this court a question of fact, viz.: What is a reasonable sum for use and occupation? What was to the defendant "the natural and ordinary value of the use" of the premises?

The testimony shows, and the court below found, the use and occupation to be valueless; and having so found, the court (Cox, J.) erred in requiring of the defendant anything in the nature of supposed compensation to the complainant for loss by reason of the use and occupation. The principle is not that the mortgagor shall be compensated for all disadvantages to him, but that the mortgagee must not get anything out of his mortgage beyond the debt, interest and expenditures. *Gordon v. Lewis*, 2 Sumn., 143, p. 155.

In accounting, therefore, the mortgagee is charged with everything representative of value received by him by reason of the mortgage; his possession (especially when lawful, as here) cannot be charged on him as a tort against the mortgagor for which he may be mulcted in damages.

Mr. Chief Justice CARTER delivered the opinion of the court:

This case involves a very simple question. The instructions to this court come from the Supreme Court of the United States, and are dogmatic. We simply have the duty of performing that which we are charged by that court to perform: "The defendant is to be charged with a reasonable sum for the use and occupation of the premises from the time he took possession." A reasonable sum—that is, what it was worth to the defendant.

We would have no trouble about that in an ordinary case. What is the rental worth? The witnesses say, and say very truthfully, that the use and occupation were worth nothing. The property was an unfenced common within the city limits, impracticable of cultivation, impracticable of exclusive occupancy, and in fact unoccupied; the defendant had had merely constructive possession of it because he claimed possession.

It is difficult to see how any value could be attached to the use and occupation of property under such circumstances. But it is contended for the complainant that the use of the property is worth six per centum of its value. And what is its value is another matter of speculation. One standard is the assessed valuation, and another the estimated market value. And the defendant has been charged a percentage on valuation, as though the property has a usufruct, as though it were tenantable, as though it were under actual occupancy and yielding something to the mortgagee.

We think that the decrees below are too imaginary, are a departure both from the facts of the case and from the decree of the Supreme Court. The real value of the property is not the measure of the use; the returns the property may give the tenant constitute the value of the use, and there is no other guide. We have come to the same conclusion with the witnesses. The use and occupation of the premises was worth nothing, and, therefore, we will charge nothing for it.

But it is said, further, that the mortgagor was deprived of the power to sell the property, that this controversy arrested his dominion over it. Is a claim on that account a claim for use and occupation? For the rental

value of the property? Is it not a claim for unliquidated damages, as for obtruding an obstacle in the way of disposing of the property? It seems to us that that is not germane to use and occupation, and to that we are confined.

There remains but one minor point. The defendant received from the Government of the United States a sum of money for the occupation of the property by the military. Of this sum he paid a portion as a commission to the agent who collected it, and the court below did not credit him with the commission so paid. He should be allowed credit for that sum and be charged only with what he got over and above it.

Decree accordingly.

#### Authority of the Decisions of the U. S. Circuit Courts.

In a recent injunction suit in the U. S. Circuit Court for Oregon, wherein Wells, Fargo & Co. sought to compel the Oregon R. & N. Co. and the Oregon & California R. R. Co. to allow them to do the express business on said roads, Judge Deady cited, in support of the claim of the Express Company, recent decisions of other U. S. Circuit Courts upon exactly the same question (10 Fed. Rep., 210; 8 *id.*, 799; 6 *id.*, 426; 4 *id.*, 481; 3 *id.*, 593, 795; 2 *id.*, 465), and said:

"Until this question is settled by the Supreme Court, these deliberate decisions of co-ordinate tribunals, like the Circuit Courts, ought, except in an extreme case, to furnish a guide for the decision of this court.

"This is the rule that has been followed by justices of the Supreme Court on the Circuit. (Washburn v. Gould, 3 Sto., 133; Brooks v. Becknell, 3 McLean, 250; American, etc., Co. v. Fiber, etc., Co., 3 Fisher, 363.) And in Goodyear, etc., Co. v. George Milles et al. (7 Pat. Office Gaz., 40), Judge Emmons examines the question at some length, and concludes that, 'If one system of co-ordinate courts more than another calls for the application of these general principles, it is that of the Circuit Courts of the United States.' \* Although divided in jurisdiction, geographically, they constitute a single system, and when one court has fully considered and deliberately decided a question, every suggestion of propriety and fit public action demands that it should be followed until modified by the appellate court.—*Pacific Coast Law Journal*.

THE Mexican Government has employed a coiner from the New Orleans mint to coin 190,000,000 pieces of nickle money.

## United States Supreme Court.

No. 132.—OCTOBER TERM, 1882.

FRANCIS E. PRAY, Appellant,  
vs.

THE UNITED STATES.

*Appeal from the Court of Claims.*

Mr. Justice MILLER delivered the opinion of the court.

According to the finding of facts in this case, the claimant received, on the first day of March, 1867, a written instrument appointing him *occasional weigher and measurer*, with a compensation fixed at \$2,000 per annum *when employed*. He held the place and performed the duties of occasional weigher and measurer at Portland, Maine, under that appointment until November 30, 1877.

A further finding is this:

For each month during the period of said service the claimant was paid his compensation upon bills made out in the following form: "*The United States Dr. to F. E. Pray, occasional weigher of the customs for the Port of Portland.*"

"For my services as occasional weigher of the customs from            to           , inclusive, Sundays excepted, one month, at two thousand dollars per annum."

Each bill so made out was for the sum due for the month named in it, after deducting the Sundays, and to each was subjoined a receipt, signed by the claimant, in the following form:

"Received payment for the above services, \$           , of           , collector of customs for the Port of Portland."

The present suit is brought to recover compensation for the Sundays excepted out of these monthly payments during the entire period of service.

This demand is founded on the law which gives to the weighers and measurers, holding office as such by the usual appointment, a salary of \$2,000 per annum, in which, of course, Sundays are disregarded.

Counsel for the government contends that his letter of appointment, naming him as "*occasional weigher and measurer*," to be paid at the rate of \$2,000 per annum "*when employed*," justified payment at that rate only for the days when he was in actual service.

Whatever might have been said in opposition to this view, if claimant had asserted it during the early time of his service, it is clear that by the form of the bill for services for each month, he expressed his own understanding of the contract to be the same as that with the collector who employed and paid him,

He makes out in his own name, "*for (his) my services as occasional weigher*" "*for one month, Sundays excepted*," his bill, with the sum fixed on that basis, and accepts and signs a receipt for it, and this he does every month for ten years.

He cannot be permitted now to say, after he is out of that employment, that his contract was for \$2,000 a year as an absolute salary.

If this was the case of a person employed by a bank, a railroad company, or in any large business requiring many persons for its service, the case would admit of no argument.

We think it equally plain in the present case. (*United States v. Adams*, 7 Wall., 403; *Same v. Child*, 12 Wall., 241; *Same v. Justice*, 14 Idem, 535; *Mason v. United States*, 17 Id., 75.)

The judgment of the Court of Claims, dismissing the petition, is affirmed.

### *Supreme Court of Pennsylvania.*

UMBENHOWER v. MILLER.

A deed absolute on its face may be shown to be a mortgage by proof that the transaction was intended as a mortgage, and proof of a separate written defeasance, and parol evidence that the deed and defeasance were but one transaction. If the defeasance bears a later date than the deed, it is a question for the jury whether, under the parol evidence, the conveyance was a mortgage.

Error to the Court of Common Pleas of Berks county.

Opinion by MERCUR, J. Filed October 2, 1882.

It is well-recognized law in Pennsylvania that a deed absolute on its face may be proved by parol to have been intended as a mortgage. *Paige v. Wheeler*, 11 Norris, 282.

In this case both parties claimed title under one Hine. The defendant in error under deed from him, and the plaintiff in error by purchase at sheriff's sale as the property of Hine. The plaintiff in error claims, although the deed to the former was absolute on its face, yet, in fact, it was intended as a mortgage. He, therefore, offered in evidence a separate defeasance, to be followed by parol evidence that the deed and defeasance formed part and parcel of the same transaction, and, as the defeasance was not recorded, the whole constituted an unrecorded mortgage. The court rejected the evidence. This is assigned for error.

It is true the written defeasance offered bears date a few days after the date of the conveyance. If they bore even date they constitute in law a mortgage; but where the defeasance is of later date, it is a question of

fact for the jury to determine, under the parol evidence, whether the conveyance was a mortgage. *Reitenbaugh v. Ludwick*, 7 Casey, 131; *Wilson et al. v. Shoenberger's Executors*, 3 Id., 295. While a subsequent independent agreement to reconvey on repayment of the purchase-money will not change an absolute conveyance into a mortgage, yet the fact that the defeasance bears a later date does not preclude a party from showing, by parol, that it was executed in pursuance of an agreement under which the deed was made and delivered, thus forming a part of the same transaction. This was substantially the offer here. The defeasance on its face gives some evidence of an intention to consider both instruments of the same date. The offer is by parol evidence to connect the two, and prove they constituted one transaction.

It is true, the offer is not to prove that the defeasance was executed at the time the deed was delivered; nor is it essentially necessary so to prove. Other evidence may sufficiently prove the necessary connection between the two written instruments. A defeasance may be wholly proved by parol. Here the offer was not only to give in evidence the written defeasance, but also to prove, by other evidence, the identity of the transaction. The learned judge erred in rejecting the evidence.

Judgment reversed and *venire facias de novo* awarded.—[*Pittsburgh Legal Journal*.]

**Evidence: Statement of Agent; Corporation.**—A statement made by an agent to his principal cannot be used against the latter by a third party; nor where the agent is the common agent of a body of persons, such as the chairman of a company, can a statement by him to the members of the body, *e. g.*, at a statutory meeting, be used against the body by one of its own members, *e. g.*, a shareholder. A applied to have his name removed from the list of members of a company on the ground that he had been induced to take shares by false representations contained in a prospectus. At the hearing of the application he sought to use, in support of his contention as to the falsity of the prospectus, a statement made by the chairman of the company (after the issue of the prospectus) in course of explaining the company's affairs at a statutory meeting. *Held*, That he could not be allowed to do so. [*R. Devala, President Gold M. Co. v. Ex parte Abbott, Eng. H. Ct., Ch. Div., Jan. 22, 1883; 48 L. T. R., 259.*]

THE man of exalted genius, throws, by the splendor of his talents, all inferior merits into shade. He is exposed therefore, to all the shafts of contemporary jealousy

## Land Department.

Furnished by SICKELS & RANDALL.

Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

### CARLAND v. FLANAGAN.

Pre-emptor performed some acts of settlement during the period of about ten months after settlement but never established his residence on the land, alleging as an excuse official duties. *Held*, 1st. The case does not fall within the rule stated in *Benson v. Railroad*. Distinction stated. 2d. Residence must be established, and a continuous compliance with the requirements of law shown. A failure in these respects will only be overlooked in exceptional cases and for controlling reasons.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
January 6, 1883.

*The Commissioner of the General Land Office:*

SIR: I have considered the case of W. W. Carland v. A. P. Flanagan, involving the S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , the N.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , and lot 4 of section 2, township 27, R. 47, Miles City, Montana, on appeal by Carland from your decision of January 21, 1882, holding his entry subject to the claim of Flanagan.

Flanagan filed declaratory statement May 12, alleging settlement March 15, 1880. He drove a stake with a notice thereon describing his claim. May 24th he hauled logs for a house, and on the next day built up its walls, cut a doorway and laid poles for supporting a dirt roof, and slept and ate on the land two days and nights. He did nothing more for about five months, when, October 15th and 27th, he hauled logs and poles, and on November 10th commenced digging a well, at which he worked twelve days; he hauled stones for it on the 24th, and finished it on the 26th. On December 5th he plastered the house with mud; on the 10th put in a window, stove and pipe, and table, and ate and slept there. On the 12th he went to the woods for logs for an addition to the house, and slept in the house the night of the 14th. On the 18th he hauled lumber for a floor, and on January 1, 2 and 3, 1881, hauled manure to the house and banked it. He has cut about one and one-half tons of hay on the land, and built a pen for its storage. He has not cultivated any portion of the land, and the above constitutes his whole improvements. During this entire time he was a resident housekeeper with his family at Miles City, where he was engaged in various pursuits, and where he had resided for several years; and he makes no pretence of residence on the tract, except as above stated. He alleges in excuse for his



absence therefrom his official duties as county assessor and census enumerator, the sickness of his daughter and his poverty.

It is understood that the land is not far distant from Miles City; that residence thereon would not materially interfere with the discharge of any official duty, and that no law of the United States, or of the territory, required such officer to reside at Miles City. Even did they, it would not excuse non-compliance with an express requirement of the pre-emption law, in order to suit his personal convenience.

The case is not within that of *Benson v. W. P. Railroad Company*, (Copp's Land Laws, 412), where the pre-emption filing of a public officer, who had resided a long while on the land and whose good faith was manifest, was sustained, although he left it for a temporary residence at the capital of the State, under a law requiring his residence there—because Flanagan never established his residence on the land in question.

Nor is the sickness of his child a valid excuse. This did not occur until the latter part of October—more than seven months from his settlement—nor was she so ill as to require a physician more than five or eight times, nor her mother's attendance, who, during the alleged time of this sickness, was a teacher in the public schools of Miles City. The excuse of poverty is equally untenable. During the year 1880, and up to the date of Garland's entry, Flanagan received for his services as assessor, \$804, and as census enumerator, \$168; and between September, 1880, and January 5, 1881, his wife received for her services \$200, making a total income from these sources of \$1,167.

On these facts you sustain the filing of Flanagan because, as you think, good faith characterized his intentions as to residence, which intention, you state, "is the controlling feature for consideration;" and that "if he settled upon the land, primarily, with the view of making it his home, and had given continuous evidence of such intention (which in your opinion he did) up to the date of trial, he had not forfeited his right of entry under the law by his mere failure to execute the intention."

I do not concur in this view. The law is not satisfied by intentions. They are not the equivalent of the actual residence and improvement demanded; but continuous compliance with all the requirements of the law is essential, and failure therein will not be overlooked except under urgent circumstances, and for controlling reasons.

Flanagan's neglect to establish a residence

on the tract during eleven of the thirty-three months within which a pre-emptor must perfect his entry, with his slight improvements, manifest a want of good faith, and a purpose to acquire a tract of the public land without compliance with the required conditions; and I concur with the local officers in the opinion that neither as to inhabitancy nor improvement is he within the requirements of the pre-emption law, and that his filing should be concealed.

Your decision is reversed.

Very respectfully,

H. M. TELLER,  
Secretary.

## The Courts.

### U. S. Supreme Court Proceedings.

APRIL 30, 1883.

The following gentlemen were admitted to practice during the past week:

James E. Carpenter and Joseph F. Mosher, of New York City.

No. 237. *Wm. H. Ellis, master, &c., et al., v. The Atlantic Mut. Ins. Co. of New York et al.* From C. C. U. S., D. of Louisiana. Decree affirmed. Opinion by Mr. Justice Blatchford.

No. 255. *Wm. P. Sinclair & Co. et al. v. Beatrice M. Cooper, widow, etc., et al.* From C. C. U. S., D. of Louisiana. Decree affirmed. Opinion by Mr. Justice Gray.

No. 250. *The Adriatic Fire Ins. Co. et al. v. John P. Treadwell.* To C. C. U. S., S. D. of New York. Judgment reversed and new trial ordered. Opinion by Mr. Justice Matthews.

No. 116. *E. R. Matthews, executor, &c., et al., v. The Memphis & Charleston R. R. Co. et al.* From D. C. U. S., N. D. of Mississippi. Decree affirmed. Opinion by Mr. Justice Woods.

No. 235. *Thos. Borse, receiver, &c., v. Wm. King et al., assignees, &c.* To S. C. of New York. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 172. *The Parkersburg & Ohio River Transportation Co. v. The City of Parkersburg et al.* From C. C. U. S., D. of W. Va. Decree affirmed. Opinion by Mr. Justice Bradley.

No. 243. *The First Nat. Bank of Xenia, Ohio, v. D. M. Stewart et al., administrators, &c.* To C. C. U. S., S. D. of Ohio. Judgment reversed. Opinion by Mr. Justice Fields.

No. 232. *Geo. W. Campbell et al. v. The United States.* From Court of Claims. Judgment reversed. Opinion by Mr. Justice Miller.

No. 189. *The Bank of St. Thomas v. The British Brigantine Julia Blaker.* From C. C. U. S., S. D. of New York. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

Ex parte. In re Albert Grant. Motions for leave to file petition for mandamus. Submitted.

No. 85. *John A. Nichols et al. v. Henry S. Clark, administrator, &c.* Judgment vacated and cause dismissed for want of prosecution.

Ex parte. In re The Wintrop Iron Co. et al. Motion for leave to file petition for mandamus. Submitted.

No. 734. *Edward Thomas v. 'The Merchants' Nat. Bank of Boston.* From C. C. U. S., D. of Massachusetts. Dismissed per stipulation. Adjourned to May 7, 1883.

**EQUITY COURT.—Justice Cox.**

APRIL 9, 1883.

*Galligan v. Strong.* Time to take testimony limited.

*Powers v. Powers.* Sale confirmed finally and referred to auditor.

*Adams v. Adams.* Decree pro confesso against certain defendants and cause referred to auditor.

*Looney v. Quill.* Trustee's report confirmed and cause referred to auditor.

*Clark v. Krause.* Lien of complainant declined and cause referred to auditor.

*Evans v. Church.* Restraining order granted.

*Lord v. O'Donoghue.* Sales confirmed nisi.

*Long v. Long.* Amendment to bill allowed.

*Jackson v. Gales.* Rule on Rogers returnable April 16th granted.

*Ullrich v. Ullrich.* Exceptions overruled and supplemental bill dismissed.

APRIL 10, 1883.

*Cropley v. Johnson.* Demurrer sustained in part with leave to amend.

*Chase v. Chase.* Sales finally ratified and cause referred to auditor.

*Sage v. Sage.* Referred to auditor.

*Birth v. Birth.* Demurrer overruled.

*Taylor v. Claggett.* Pleas not sustained.

*Rowles v. Rowles.* Testimony before examiner ordered taken.

APRIL 11, 1883.

*Dutton v. Lewis.* Commissioners appointed to make partition.

*Jackson v. Combs.* Demurrer overruled.

*Thompson v. D. S. & F. A., and Shepherd v. F. S. & T. Co.* Consolidated. Time allowed to take further proof.

*Scott v. Scott.* Testimony ordered taken.

APRIL 12, 1883.

*Jackson v. Combs.* Demurrer overruled with leave to plead or answer.

*Hollidge v. Rowlings.* Commissions appointed to make partition.

*Holmes v. Holmes.* Testimony before examiner ordered taken.

*Ourand v. Ourand.* Sale ordered and trustee appointed to sell.

**CIRCUIT COURT.—Justice Mac Arthur.**

MARCH 20, 1883.

*Gilmore v. Miller.* Judgment by confession.

*Hayes v. Murray.* Judgment by default.

*Gregory v. Brown.* Order of publication.

*Seavey et al. v. Denmead.* Judgment on motion.

*Jaffray & Co. v. Gutman.* Same.

*Stevens v. Silverberg.* Motion for judgment overruled.

*Hammon v. Miller.* Motion for new trial overruled.

*White v. Boyle.* Judgment by confession.

*Bayne et ux v. Geiser.* Motion for new trial overruled.

*Hill v. Van Buren.* Suit dismissed.

*Starr v. Wise.* Motion for judgment granted.

*Hewell & Bro. v. Clark.* Judgment by default.

*Banks v. Schutt.* Motion for judgment granted.

*Adler, use of, v. Turten.* Garnishee to make further answer.

MARCH 28, 1883.

Jury excused for term.

MARCH 30, 1883.

*Hammond v. Miller.* Bill of exceptions signed.

APRIL 4, 1883.

*Jackson & Co. v. Miller.* Bill of exceptions signed, &c.

APRIL 9, 1883.

In the following cases judgments were entered by default:

*Tiffs et al. v. Gutman.*

*Groff v. Keisman.*

*Silver v. Damman.*

*Woody v. Casey.*

*Johnson & Co. v. Murdock.*

*White v. Cakes.*

*Prather v. Johnson.*

*Rubens v. Damman.*

*Levy & Sons v. Damman.*

*Kingle v. Oppenheimer.*

APRIL 10, 1883.

*Angney v. McMichael.*

*Davis v. Hall & Ford.*

APRIL 11, 1883.

Certain jurors excused for term.

APRIL 12, 1883.

*Libbey & Libbey v. Appleman.* Commission ordered to take testimony.

APRIL 14, 1883.

*Silver v. Darnman.* Judgment by condemnation.

*White v. Boyle.* Same.

*Randall & Fish v. Fitzgerald.* Motion for security for costs.

*Cropley v. Duvall.* Judgment by confession.

*Price & Heald v. Baldwin.* Judgment by default.

*Payson v. Carman.* Same.

*United States v. Kirk et al.* Further time allowed in which to plead.

*United States v. Waggaman.* Same.

*Pote v. W. & G. R. R. Co.* Motion for new trial overruled.

*Stutz v. Mutual Life Ins. Co.* Same.

*Richards v. Willson.* Motion to quash attachment overruled.

*Nimmo v. Reid.* Judgment set aside and leave to plead.

**CRIMINAL COURT.—Justice Wylie.**

APRIL 6, 1883.

*U. S. v. John W. Dorsey et al.*

The defendant, John W. Dorsey, was examined and testified in his own behalf; was cross-examined by the prosecution and re-examined by his counsel.

APRIL 9, 1883.

*John R. Miner,* one of the defendants, testified on behalf of the defendants.

APRIL 10, 1883.

The examination of Mr. Miner was resumed, and was cross-examined by the prosecution.

APRIL 11, 1883.

The cross-examination of Mr. Miner was resumed, and was examined re-direct by the defense. John Olcott was examined on behalf of the defense.

APRIL 12, 1883.

*James E. Waugh* and *John N. Davis* were examined on behalf of the defense. The Government examined Mr. Casey, Thomas Brown and Miss Day, in rebuttal.

APRIL 16, 1883.

Charles Sargeant, Benjamin Sargeant, John Spellman, Henry L. Atkinson, Joseph W. Barber, Wm. H. May, Charles H. Asher, Frederick Hubbard, Louis A. Newcomb, James W. Donnelly, and J. H. Rerdell were examined in rebuttal by the prosecution.

APRIL 17, 1883.

Thos. L. James was examined in rebuttal by the Government. H. P. Ramsey, Mr. Darley, A. E. Boone, Julius B. Bissell, and M. C. Rerdell were examined in rebuttal. Certain evidence was excluded, the court ruling that it should have been introduced in chief.

APRIL 18, 1883.

John A. Walsh was called as a witness for the prosecution. Evidence for both the Government and the defense were all in. The court held that the indictment laid the offense of conspiracy as of May 20, 1879, and that it came under the act of May 17, 1879.

APRIL 19, 1883.

Mr. Ker took up the whole of the day in summing up the case for the prosecution. The court decided that the Government would be allowed only one closing argument.

APRIL 20, 1883.

Mr. Ker resumed his opening argument and occupies the day.

APRIL 23, 1883.

Mr. Ker continues his summing up for the Government.

APRIL 24, 1883.

Mr. Ker continues his argument for the Government.

APRIL 25, 1883.

From this date to April 25 Mr. Ker was occupied in summing up the case of the Government.

**CRIMINAL COURT NO. 2.—Justice Hagner.**

MARCH 30, 1883.

U. S. v. Joseph Harbour. Receiving stolen property. Verdict guilty.

U. S. v. V. Jansen Ross. Motion in arrest of judgment. Argued and submitted.

MARCH 31, 1883.

U. S. v. Charles White. Indicted for house-breaking in night. Plead guilty and sentenced to imprisonment for 4 years.

U. S. v. George Butler, &c. Same, for 5 years.  
U. S. v. James Carroll. Second offense petit larceny. Sentenced for 3 years.

U. S. v. V. Jansen Ross. Information for grave robbing. Sentenced for 9 months.

U. S. v. William Jones. Indicted for house-breaking in night. Sentenced for 3 years.

U. S. v. Carrie Ager, &c. Indicted for larceny. Sentenced for 6 months.

U. S. v. Frank Minor. Indicted for murder of Victoria Minor. On trial.

APRIL 3, 1883.

U. S. v. Frank Minor. On trial.

APRIL 4, 1883.

U. S. v. Frank Minor. On trial.

APRIL 5, 1883.

U. S. v. Frank Minor. On trial.

U. S. v. Frank Minor. Verdict, guilty as indicted.

U. S. Jordan Cleaver, &c. Indicted for larceny. Verdict, guilty as indicted. Sentenced for 2 years and 9 months.

**The Courts.****CIRCUIT COURT.—New Suits at Law.**

APRIL 30, 1883.

24423. James McBride v. Francis X. Fleischell. Appeal. Defs. atty, A. O. Richards.

24424. Walter O. Jones v. Margaret Collins. Plea of title. Plfs atty, G. E. Hamilton.

24425. N. T. Metzger & Bro. v. The Penn. R. R. Co. Appeal. Plfs atty, F. T. Browning.

24426. Ira Nichols v. William H. Main et al. Damages, \$2,327.66. Plfs atty, I. G. Kimball.

24427. The Borden Mining Co. v. A. M. Brandt. Notes, \$1,241.10. Plfs atty, Linden Kent.

MAY 1, 1883.

24428. The Baltimore & Potomac R. R. Co. v. John Dowling. Plfs attys, Totten and Bailey. Defs atty, F. T. Browning.

MAY 2, 1883.

24429. Dennis Connell v. Timothy O'Connell. Judgment of Justice Walter, \$31.50. Plfs atty, C. A. Walter.

24430. Henry A. Steinberger v. John J. B. Lerch. Replevin. Plfs atty, C. A. Walter.

24431. The United States ex rel., Carl Rumpf et al. v. Henry M. Teller et al. Mandamus. Plfs atty, A. Pollok.

24432. John E. Little et al. v. The District of Columbia. Damages. Plfs attys, Birney & Birney.

24433. The United States, ex rel. Samuel H. Ruggles, v. Henry M. Teller. Mandamus. Plfs atty, Jeremiah Hall.

MAY 3, 1883.

24434. Thomas E. Waggaman v. James E. Turton. Appeal. Defs attys, Riddle, Davis & Padgett.

24435. William Milstead, jr. v. Roger Melling. Note, \$160. Plfs atty, L. O. Williamson.

**PROBATE COURT.—Justice Cox.**

APRIL 16, 1883.

Will of Caroline A. Dolbear; fully proved.  
Will of Dr. Noble Young; filed and petition of executor for probate and letters.

Estate of Hester M. Louvrier; receipts filed.  
Estate of Timothy O. Howe; Assent of party filed.

Estate of Robert G. Atkinson; receipts of distributees filed.

Estate of Wm. B. Kibbey; Inventory and list of debts returned.

APRIL 17, 1883.

Estate of William B. Roper; receipts of distributees filed.  
Estate of Noble Young; motion for commission to prove will.

In re Orleans V. McCarty, guardian; order to executor to pay on account of maintenance of ward.

Will of James M. Johnson; filed for probate.  
Copy of will of Lloyd N. Rogers; from Baltimore filed and recorded.

Estate of Rachel Johnson; renunciation of administrator.  
Will of Caroline Fowler proved by second witness.

Estate of L. Louisa Yeabower; will admitted to probate and letters granted. Administrator c. t. a., bonded.

Estate of Gottlieb Rumpf; final notice of executor to be published.

APRIL 18, 1883.

The following accounts were passed by Justice Cox:  
Estate of Benjamin N. Meeds; first account of executrix.

Estate of James F. Meguire; account of personality filed by the attorney.

Estate of Noble Johnson; will admitted to probate and letters granted; bonded.

Estate of Mary F. Woods; petition of executrix for probate of will and letters filed.

Estate of Eliab Kingman, assent of certain heirs.  
Estate of Jared L. Elliott; administrator partially qualified.

APRIL 19, 1883.

Will of Chas. A. Watts, fully proved by third witness.  
Estate of John E. Clark; administrator qualified.

Estate of Deliah Clark; petition of executor, will admitted to probate and letters granted.

Estate of George Vickroy; administrator partially qualified.

Estate of Jared L. Elliott; administrator qualified and letters issued.

Estate of Eliab Kingman one of the executors bonded and qualified.

APRIL 20, 1883.

Estate of Martha E. Popkins; administrator bonded.  
Estate of Mary Duvall; proof of publication filed.

Estate of Robert B. Wagner; same.  
Estate of Thomas Lewis; administrators' report of investment on U. S. bonds.

APRIL 21, 1883.

Estate of Sarah Hammond; administrator bonded and qualified.

Estate of Catharine Brown; propounder of will, made plaintiff and caveators defendants.

Estate of J. Erhard Mack; bond of administrator reduced. Estate of Caroline A. Dolbear; proof of publication filed. Will admitted and letters granted.

Will of George W. Collins; proved by two of the witnesses and will admitted to probate.

Copy of will of J. Forsyth Meigs; from Philadelphia, Penn. filed.

Estate of Bashrod Birch; proof of publication filed, administrator d. b. n., s. t. a., bonded.

Estate of Rachel W. Birch; proof of publication filed, administrator appointed and bonded.

Estate of Moses Ogle; same.

Estate of Mary Duvall; administrator bonded.

Estate of Stephen J. Dallas; proof of publication filed, will fully proved and admitted to probate.

Estate of John Keefe; inventory of personalty returned.

Will of George Otto; filed and proved by two witnesses, letters granted, &c.

Estate of John H. Johnson; publication ordered.

Estate of Rachel Johnson; letters granted, administrator bonded.

Estate of Robert B. Wagner; administrator appointed and bonded.

Obas. W. Smiley, guardian; appointed and bonded.

Estate of Wm. H. King; administratrix appointed and bonded.

Estate of Noble Young; notice ordered to be issued and commission to prove will.

Susan Benson, orphan of Wm. Benson, deceased; appointed to Thos. Hannagan.

Estate of Robert J. Atkinson; second account of administrator.

### Legal Notices.

#### TRUSTEE'S SALE OF IMPROVED PROPERTY ON SECOND ST., NEAR HIGH STREET, GEORGETOWN, D. C.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 10th day of April, A. D. 1883, in cause No. 8805, Equity Docket 23, the undersigned, Trustee, will sell at public auction, on MONDAY, the seventh day of May, A. D. 1883, at half-past five o'clock p. m., in front of the premises; all that piece or parcel of ground and premises known and described as being part of lot one hundred and twenty-five (125) of Beatty & Hawkins' addition to Georgetown, D. C.: Beginning 23 feet 8 inches on the south side of 2d street west from the west line of High street; thence with the south line of 2d street west 17 feet 4 1/2 inches; thence south and parallel with the west line of said part of lot, 43 feet; thence southwest 23 feet 3 inches; thence obliquely until it intersects the west line of part of said lot at a point 3 feet from the southwest corner of part of said lot; thence east 43 feet 9 inches to intersect a line drawn south 55 feet 2 inches; thence, with said line reversed, to the beginning, (reserving to J. H. King the use of an alley near the southwest corner).

Terms: One-third cash; balance in 12 and 18 months; notes to be secured by deed of trust, and to bear interest; a deposit of \$100 at time of sale; conveying, &c., at purchaser's cost. Terms to be complied with in seven days; otherwise re-sale at risk and cost of defaulting purchaser, after giving five days' public notice of such re-sale in some newspaper published in Washington, D. C.

SIDNEY T. THOMAS, Trustee. 18-1  
DUNCANSON BROS., Auctioneers.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Moses Ogle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1883.  
18-3 SAM'L. R. BOND, Administrator.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of May, 1883.

HERMAN COFFERMAN } No. 24,412. At Law.  
v.

HERMAN KURZMAN.

On motion of the plaintiff, by Mr. Garnett, his attorney, it is ordered that the defendant, Herman Kurzman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAO ARTHUR, Justice.  
True copy. Test: 18-3 E. J. Meigs, Clerk, &c.

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 1, 1883.

In the matter of the Will of Fisher A. Foster, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Snell.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. OHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
B. F. LEIGHTON, Solicitor. 18-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 1, 1883.

In the case of Ivory G. Kimball, Administrator of Garrett Barry, jr., deceased, the Administration aforesaid has, with the approval of the court, appointed Friday, the 26th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 18-3 H. J. RAMSDELL, Register of Wills.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 4, 1883.

In the matter of the Estate of James O. Reid, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Higgins, of Prince William Co., Va., a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. OHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
C. STORRS, Solicitor. 18-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

VIRGINIA F. PAYNE ET AL. } Eq. No. 2,326. Dec. 22.  
v.

WILLIAM T. PAYNE ET AL.

Edward H. Thomas and Glen W. Cooper, trustees, paying reported that they have sold original lot 13, in square 15, to William T. and Charles B. T. Payne, at and for the sum of \$7,100; it is, by the court this fourth day of May, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the fifth day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last named day.

By the Court. OHAS. P. JAMES, Justice.  
A true copy. Test: 18-3 E. J. Meigs, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 24th day of April, 1883.

FRANCIS D. SHOEMAKER ET AL. } No. 2,321. Eq. Dec. 22.  
v.

EDWARD SHOEMAKER ET AL.

On motion of the plaintiffs, by Mr. O'Grady, their solicitor, it is ordered that the defendants, Edward Lukens, Lewis A. Lukens, Mary T. Lukens, David Lukens, Ellen Lukens, Mary Lukens, Margaret A. Smedley, Albion M. Smedley and Mary E. Fowler, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 17-3 E. J. Meigs, Clerk,

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Royal Parkinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.

GEORGE B. PARKINSON, Administrator,  
15-3 75 West 4th street, Cincinnati, Ohio.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Vigle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of March, 1883,

ELIZABETH M. VIGLE,  
mark  
Administratrix.

O. M. MATTHEWS, Solicitor.

15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Andrea de Frouville, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1883.

LUKE C. STRIDER, Administrator.  
M. E. DAVIS, Solicitor.

15-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM LORD, use of KIRBY,

v. } No. 5429. Eq. Doc. 23.

PATRICK O'DONOGHUE ET AL.

UPON the coming in of the trustees' second report, it is this 9th day of April, A. D. 1883, ordered, that the sale of lot No. 7, in the subdivision of lot No. 2, in square No. 578, and the sales of parts of lot No. 12 in square No. 748 be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of May next. This report states the amount of sales of said lot 17 in square 578 at \$6,318.90, and of sales in said lot No. 12 in square No. 748 at \$760. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the Court.

W. S. COX, Justice.

A true copy. Test: 15-3 R. J. MEIGS, Clerk.

JEANP MILLER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.**

In re estate of J. L. Waldrop.

In consideration of the petition of Phebe Warren Tayloe, herein filed, it is this seventh day of April, 1883, ordered by the court, that if H. W. Waldrop, the widow of J. L. Waldrop, or Robert J. Lindsay, the administrator of the said Waldrop, deceased, in the State of North Carolina, where the said Waldrop died, or some relation of the said Waldrop, deceased, or some larger creditor of the estate of said Waldrop than the petitioner, Phebe Warren Tayloe, do not apply for and obtain letters of administration on the estate of said J. L. Waldrop, in the District of Columbia, issuing thereupon from this court, on or before the twenty-seventh day of April, 1883, the prayer of the petition of said Phebe Warren Tayloe for letters of administration on said estate in this District to issue to her attorney, George F. Appleby, will be granted by this court: Provided, publication of this order be made in the Washington Law Reporter at least once a week before said date.

A true copy.

15-3

W. S. COX, Justice.

Test: H. J. RAMSDALL, Register of Wills D. C.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding an Equity Court, April 12, 1883.**

JESSE S. HERSEY

(Married by the name of Carrie J. Brown.)

v.

EDWARD E. HERSEY.

(Married by the name of William G. Taylor.)

No. 8516.  
Eq. Doc. 28.

On motion of the plaintiff, by Mr. Norris, her solicitor, and it appearing that a subpoena was duly issued and a return endorsed by the marshal of the District "not to be found," and that an affidavit of Jacob Oriser, a disinterested witness, is filed in the cause, that the defendant is a non-resident of the said District, and has been absent therefrom six months, it is ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

W. S. COX, Justice.

A true copy. Test: 15-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of April, 1883.**

JOHN T. RICHARDS

v.

GEORGE WILSON.

No. 24,343. Law Docket.

On motion of the plaintiff by Messrs. Ross & Dean, his attorneys, it is ordered that the defendant, George Wilson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A. B. HAGNER, Justice.

True copy. Test: 15-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of April, 1883.**

HARRIET E. MIDDLETON

v.

JOHN MIDDLETON ET AL.

No. 8627. Eq. Doc. 23.

On motion of the plaintiff, by Mr. Mussey, her solicitor, it is ordered that the defendant, Benjamin Dant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

WALTER S. COX, Justice.

A true copy. Test: 15-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

A. S. WORTHINGTON ET AL., Trustees,

v.

C. A. REED, Administratrix, et al.

No. 8182.  
Equity Doc. 23.

The trustee in this cause having reported the sale of all the interest and estate of which William B. Reed died seized and possessed in original lot 13 and lots 23 and 24 of Bushrod W. Reed's subdivision, all in square 290, for the sum of \$175, cash: it is this 6th day of April, 1883, ordered and decreed that the said sale stand confirmed unless objections thereto be filed on or before the 6th day of May, 1883, provided a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before the said date.

By the Court.

WALTER S. COX, Justice.

A true copy. Test: 14-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jared L. Elliott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.

JOHN J. JOHNSON, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Timothy O. Howe, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

F. H. HOWE, Administrator.

14-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of April, 1883.  
**IN RE THE ALLEGED LUNACY**

No. 8484. Equity Docket.

OF GEORGE BRENT.

On motion of the petitioner, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the said George Brent, the alleged lunatic, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

Test: 17-8 W. S. COX, Justice.  
E. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of S. Louisa Yeabower, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

17-3 SAM'L MADDOX, Administrator c. t. a.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. Erhard Mack, late of the City of New York, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1883.

WM. PIERCE BELL, Solicitor. 17-3 JAMES H. MARR.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.

In the matter of the Estate of Mary F. Woods, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Elizabeth M. Woods.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.

Test: 17-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.

In the matter of the Estate of Abby L. Bodfish, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Frederick D. Sewall.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.

Test: H. J. RAMSDALL, Register of Wills.

J. W. & GEO. L. DOUGLASS, Solicitors. 17-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. L. Waldrop, late of the State of North Carolina, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of April, 1883.

17-3 GEORGE F. APPEBY.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

WILLIAM LORD, use of KIRBY, } No. 8429. Equity.  
PATRICK O'DONNOCHEE ET AL. }

Upon the coming in of the trustees' further report herein on this 16th day of April, A. D. 1883, it is, this 17th day of April, A. D. 1883, ordered, and decreed that the sales—  
To Z. Tobriner, of lot 37, in square No. 749, for.... \$ 173.77  
T. A. Daly W. ½ of lot 2, in square No. 539, for 1,490.00  
T. E. Waggaman, W. ½ lot 23, in square 545, for. 490.00  
T. E. Waggaman, E. ½ lot 23, in square 545, for.. 490.00  
A. Behrend, part of square 578, for..... 2,475.98  
T. D. Daly, E. ½ lot 13, in square No. 517, for.. 1,600.00  
and to A. Fanthuber, W. ½ lot 13, in square No. 517, for..... 1,710.00

be and the same hereby are finally ratified and confirmed unless cause to the contrary be shown on or before the 17th day of May next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior thereto.

By the court. JESUP MILLER, Solicitor.

W. S. COX, Justice. 16-8

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 17, 1883.

In the case of Ferdinand Theilkuhl, Executor of Gottlieb Rumpf, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.

CHAS. A. WALTER, Solicitor. 16-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 14, 1883.

In the matter of the Estate of Ann Phillips, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jane Lynch.

All persons interested are hereby notified to appear in this Court on Saturday, the 6th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

Test: W. S. COX, Justice.

H. J. RAMSDALL, Register of Wills.

HANNA & JOHNSTON, Solicitors. 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph K. Barnes, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

MARY T. BARNES, Executrix.

WORTHINGTON & HEALD, Solicitors. 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keefe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

Witness: GEO. E. JOHNSON. BRIDGET W. KEEFE,  
her mark.  
Administratrix c. t. a.

P. B. STINSON, Solicitor. 16-3

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.** April 21, 1883.

In the matter of the Will of John M. Johnson, late of the District of Columbia, deceased, which will was filed herein on the seventeenth day of April, 1883.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by petition of Mary Virginia Wells, through her attorney, George F. Appleby.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **WALTER S. COX, Justice.**  
Test: 16-3 **H. J. RAMSDALL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George O. Garrison, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1883  
**ANN B. GARRISON, Executrix.**  
16-3 1441 S st. n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of April, 1883.**

**HENSON EUSTRICH**

No. 8512. Eq. Doc. 22.

**MAKIR EUSTRICH.**

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant, Makir Eustrich, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **MAO ARTHUR, Justice.**  
True copy. 16-3 Test: **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of April, 1883.**

**WILLIAM F. BURY**

No. 8616. Equity Docket.

**ANNIE G. BURY.**

On motion of the plaintiff, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendant, Annie G. Bury, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **W. S. COX, Justice.**  
A true copy. Test: 16-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles W. Utermoehle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.  
**AUGUSTE W. UTERMOEHLE, Executrix**  
**BRADLEY & DUVALL, Solicitors.** 16-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business.** April 24, 1883.

In the case of Daniel W. Middleton, Jr., Administrator of Jacob W. Ker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of June, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17-3 **H. J. RAMSDALL, Register of Wills.**

*Legal Notice.*

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cecelia Cain, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of March, 1883.  
**WILLIAM T. SIBLEY,**  
**GEORGE F. T. COOK,**  
**VOORHEES & SINGLETON, Solicitors.** 15-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Eliza Bold, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1883.  
**JOHN H. BROOKS, Administrator c. t. a.**  
**W. T. WISWALL, Solicitor.** 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Clara B. Brooks Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1883.  
**16-3 T. W. BARTLEY, Executor.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William D. Aiken, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of April, 1883.  
**WILLIAM F. HELLEN, Administrator.**  
**CRITTENDEN & MACKAY, Solicitors.** 16-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine W. Garner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1883.  
**16-3 ALEXANDER J. BENTLEY, Administrator.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick H. Cooney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.  
**JOHN H. COONEY, Administrator.**  
**W. W. WISHART, Solicitor.** 16-3



# Washington Law Reporter

WASHINGTON - - - - - May 12, 1883.

GEORGE B. CORKHILL - - - EDITOR

IN the case of *The Inhabitants of Montclair, &c., v. Dana*, (No. 146, October Term, 1882, S. C. U. S.) in error to the circuit court of the United States for the District of New Jersey, it clearly appeared that the plaintiff purchased the bonds which were the subject of the suit, without any notice of fraud or illegality on the part of the commissioners in the exercise of the power conferred on them by statute, and the court below in effect said to the jury, that the evidence left no room to dispute the fact. The Supreme Court held that the action of the court in this respect was consistent with the rule frequently announced that the jury may be controlled in their determination of a question, by a peremptory instruction if the testimony is of such a conclusive character as would compel the court in the exercise of a sound legal discretion to set aside a verdict if one was returned in opposition to the testimony. *Hendricks v. Lindsay, &c.*, 93 U. S., 146; *Phoenix Mut. Life Ins. Co. v. Doster*, decided at present term.

Opinion by Mr. Justice HARLAN.

## The United States Supreme Court.

The number of cases left on the docket of the court at the end of the October term, 1882, was 836. Since then 422 new cases have been docketed, making a total of 1,258. 187 of these cases have been argued orally and 97 submitted on printed briefs, making a total of 284 cases brought to the consideration of the court, during the past term. The number of cases finally disposed of and stricken from the docket was 387, as follows: Affirmed, 185; reversed, 60; questions answered, 8; cases dismissed for various reasons, 134. This is a slight increase over the business of last year. All but 14 of the cases argued and submitted have been disposed of. But the number of cases awaiting the action of the court continues to increase from year to year, and the crowded condition of

its calendar calls loudly for some relief at the hands of Congress. The court adjourned *sine die* May 7, 1883.

THE COURT IN GENERAL TERM has amended the fifty-fourth rule as follows:

In all actions at law brought or hereafter to be brought grounded upon account, in which it may be necessary to examine and determine upon accounts between the parties, the court, in its discretion, at any stage of the case, may order the accounts between the parties to be audited and stated by the auditor of the court, or by a special auditor or auditors to be appointed by the court; and when such order shall be made in any case the course of proceedings before such auditor or auditors shall be the same therein, and such auditor or auditors shall have the same powers and duties in the premises as in similar cases referred to the auditor in chancery by the court, sitting in equity. When such audit shall be completed the auditor or auditors shall state and file the report and account in the clerk's office and give notice to the parties or their attorneys, and the clerk shall note the time the same is filed in the docket, and at the expiration of thirty calendar days thereafter, judgment may be entered on motion of either party in accordance with such report and accounts, either by the court or by a judge at chambers, unless exceptions are filed thereto within said time for errors of law or of fact therein; and the party so excepting shall state therein definitely, in precise and distinct terms, the grounds of such exceptions, and shall point out particularly the item or items in such reports and accounts to which they are taken, and shall annex thereto a certificate of counsel that in his opinion the matters of law therein stated are well founded in law and an affidavit that such exceptions are not interposed for delay and that they are true in point of fact: and shall serve a copy thereof on the opposite party or his attorney.

When such exceptions are so filed the court shall enter the case on the trial calendar of that term in its proper place and the issues made by such exceptions shall be tried and determined in the manner as other issues of law and of fact in action at law, and any part of such report and accounts not so excepted to shall be adjudged to be conclusive between the parties on such trial. If only general, immaterial or frivolous exceptions are made, or if they are filed without the certificate of counsel and affidavit of exception and service of copy as aforesaid, they



may be overruled by the court or by a judge at chambers on notice, and motion and judgment entered as if no exceptions had been filed.

## Supreme Court District of Columbia.

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

THOMAS O'DAY v. LOUIS VANSANT.

AT LAW. No. 22,969.

{ Decided March 5, 1883.  
The CHIEF-JUSTICE and Justices HAGNER and COX sitting.

In ejectment when the plaintiff derives his title through a sale made by a trustee, by reason of default under a deed of trust given to secure the payment of a sum of money, it is not necessary that the plaintiff shall affirmatively establish by parol evidence, all the preliminaries showing the authority of the trustee to sell, such as the default, the regular advertisement of the sale of the property, &c. If, after the debt is due according to the terms of the deed of trust, the trustee conveys in professed execution of the trust and by way of foreclosure, he passes the legal title to the grantee for all the purposes of an ejectment suit. If he has acted in violation of his trust, the remedy against him is in equity.

THE CASE is sufficiently stated in the opinion.

M. F. MORRIS and FRED. W. JONES for plaintiff.

H. T. TAGGART and R. P. JACKSON for defendant.

Mr. Justice Cox delivered the opinion of the court.

This was an ejectment suit relating to part of lot 13, Square 37, in the city of Washington. The plaintiff derived his title through a sale made by a trustee by reason of default under a deed of trust given to secure the payment of a sum of money.

At the trial the ruling of the court was, in substance, that because the plaintiff had failed to prove that the debtor who gave the deed of trust, was in default at the time of sale, and also failed to prove affirmatively the regular advertisement of the sale of the property under the deed of trust, therefore the plaintiff was not entitled to recover. In other words, it was held that in an ejectment suit the party claiming under a sale made by authority of a deed of trust, must affirmatively establish by parol evidence at the trial, all the preliminaries showing authority to sell. That was excepted to, and that is the only question brought before us in this record.

We think there was error in that ruling. The due publication of notice of sale and the fact that the debtor is in default are matters *in pais* entirely. There are no methods known, of making them matters of record, and after the lapse of a certain time, it would be impossible to prove them by parol. We think that after a debt is due according to the terms of the deed of trust, and the trustee conveys in professed execution of his trust and by way of foreclosure of the deed of trust, he passes the legal title to the grantee for all the purposes of an ejectment suit founded on such title. If he acts in violation of his authority under the trust, it is very easy for the grantor to invoke the aid of a court of chancery to establish his title. But we think it sufficient to show that the trustee conveyed a legal title professedly in execution of his trust. If it were made necessary for the plaintiff in an ejectment suit to establish all these preliminaries which are matters *in pais* it would very seriously affect the security of all titles in trust.

We think the court below erred in that respect, and a new trial is therefore granted.

JAMES H. COHEN

vs.

ROBERT COHEN'S EXECUTOR.

AT LAW. No. 23,065.

{ Decided February 12, 1883.  
The CHIEF JUSTICE and Justices HAGNER and COX sitting.

1. *Semble*, That, in the absence of an express contract, the law does not imply a promise from a father to a son to pay for services rendered when the son is living with the father free of all cost for board and lodging.
2. Where the issue on trial is the value of the services of a son as clerk in his father's store, evidence of the amount of salary paid by the father to another son in the same store is irrelevant and inadmissible.
3. Where the plaintiff has taken the witness stand in his own behalf in a suit against an executor to recover the value of services rendered the testator, it is error and a good ground for a new trial if the court admit his testimony against the objection of the defendant as to statements made by the deceased relating to a matter in controversy.

THE CASE is sufficiently stated in the opinion.

COOK & COLE for plaintiff.

ANDREW B. DUVALL for defendant:

Where the relation of parent and child exists, the law, in the absence of an express contract, regards services rendered by a child to a parent, as acts of gratuitous kindness and

affection. 2 Parsons on Contracts, 46 and notes.

In support of the 2d exception, counsel cited *Robbins v. Harvey*, 5 Conn., 335, 341; *Thompson v. Bowie*, 4 Wall., 463, 471; *Lucas v. Brooks*, 436, 454.

Plaintiff's testimony in regard to alleged transactions with and statements by the testator are, in the very teeth of the statute, (Sec. 858 Rev. Stats. U. S.), subversive of its letter and spirit. Page v. Burnstine, 102 U. S., 664, 669.

Mr. Justice Cox delivered the opinion of the court.

This was an action of assumpsit brought by the plaintiff to recover compensation for his time, labor and services as clerk in his father's store from October 1st, 1876, to March 1st, 1880, three years and five months, at the rate of \$50 per month. Various credits are given which reduce the balance claimed to \$826.40.

Both the parties, plaintiff and defendant, were sons of Robert Cohen, deceased, and defendant was his executor. At the trial the plaintiff offered no evidence to maintain his case except to show what the services of an ordinary good clerk in the shoe business were worth, and that during the period referred to he was seen in his father's store, apparently waiting on customers, and that he had been in the shoe business some twenty-five years. The defendant thereupon asked the court to charge the jury that upon this testimony they should find a verdict for the defendant, on the ground that no evidence was offered to show any contract between the father and son, and that the law does not imply a promise by the father to pay the son for services rendered him. We think the defendant was right in this respect, more especially as in this case the son was living with his father free of all cost for board and lodging. So that if the case had come before us simply on that exception, we should probably, on that ground alone have been constrained to direct a new trial. But the wrong complained of here was cured by the defendant himself. After objecting that there was no proof of contract between the father and son to pay for the latter's services, the defendant took the stand and put in evidence the books of his father, in which there are distinct entries of credits for salary to the son, for his services, showing that there was a contract relation between the father and son. The book contains a credit, for instance, of nine month's salary to October 1st, 1876, at \$50 a month, and subsequent credits of \$25 a month for six months to April, 1877. After the defendant had testified in chief, he

was asked, "What was your salary during that period?" and this question was objected to, but the objection was overruled, and the evidence submitted. That was excepted to. We think there was error in that, first, because the enquiry was not pertinent to the examination-in-chief, and was not, therefore, proper cross-examination. In the next place, it was not pertinent to the issue on trial, which was the value of the plaintiff's services and the existence of any promise express or implied on the part of his father to pay for them.

But a more important error is disclosed in the fourth bill of exceptions. A book having been put in evidence in which the salary of the plaintiff seems to have been reduced by his father to \$25 per month, the plaintiff then took the stand in order to testify that he had no notice of this reduction of his salary. He was asked whether his father had notified him that he had reduced his salary, and testified that his father did not notify him, but shortly afterwards he knew it, and saw the entry in the books, and his father told him it would be all right.

The purport of all this is, that his father told him that notwithstanding this entry of a credit for reduced salary, he would be entitled to the salary that he fairly earned, or that he had been receiving before, and that it was so understood by both parties. That was objected to by the defendant. So that the court seems to have admitted the plaintiff in the case to testify as to statements made by the deceased relating to a matter in controversy; and this being within the direct inhibition of the statute on that subject (Sec. 858 Rev. Stats. U. S.), was so important an error that we do not see how the verdict can be sustained. It must be set aside and a new trial ordered.

*Bond: Penalty; Liquidated Damages.*—When a bond is given in the sum of \$500, to be paid on the failure to make a drain for a certain purpose and in a specified time, the sum is to be regarded as a penalty and not liquidated damages. A sum of money in gross, to be paid for the non-performance of a contract, is, as a general rule, to be considered as a penalty and not liquidated damages. [*Smith v. Wedgwood*, S. C. Me., Feb. 22, 1883; *Reporter's Advance Sheets*.]

It is believed that the unexpended balance of the Geneva award will be sufficient to pay the entire amount of all the judgments which will be rendered in class one, and about forty per cent. of the judgments in class two.

## United States Supreme Court.

No. 228.—OCTOBER TERM, 1882.

JOHN B. SLAWSON, Appellant,

vs.

THE GRAND STREET, PROSPECT PARK AND  
FLATBUSH RAILROAD COMPANY.

*Appeal from the Circuit Court of the United  
States for the Eastern District of New York.*

### STATEMENT.

This was a suit brought by John B. Slawson, the appellant, to restrain the infringement of two letters-patent, one granted to him as inventor, and the other held and owned by him as assignee of the inventor.

The one first-mentioned was a reissue dated January 24, 1871. The invention therein described was an improvement in fare-boxes for receiving the fares of passengers in omnibuses and street cars.

The specification described the ordinary fare-box used in street cars and omnibuses, consisting of two apartments, the one directly above the other. This well-known contrivance, the specification declared, was so arranged that the passenger deposited his fare in an aperture in the top of the upper apartment. It fell upon and was arrested by a movable platform, which constituted at the same time the bottom of the upper apartment and the top of the lower. This platform turned on an axis acted on by a lever. When turned the fare fell into the lower apartment, which was a receptacle for holding the fares accumulated during the trip. Upon withdrawing the lever, the platform resumed its horizontal position, ready to arrest the next fare deposited. The upper apartment had a glass panel on the side next the driver, so that he could see the fares as they were deposited by the passengers. This contrivance enabled the passenger to pay his own fare and furnished a place of safe deposit for it, so that it could not be abstracted by the driver. It enabled the driver to scrutinise the fare after it was deposited by the passenger, and see that it was the proper amount and in genuine coin or tickets before it was passed into the general receiving-box.

The improvement described in the patent consisted in the insertion of a glass panel on that side of the upper apartment of the box next to the inside of the car or omnibus, and opposite to the glass panel next the driver, so that when the fare was temporarily arrested in the upper apartment, the passenger could see and examine it before it was passed

into the lower or receiving apartment. The specification declared:

"By this means disputes and contentions are prevented as to the sufficiency of the amount deposited to pay the fare, or as to the genuineness of the money or tickets used for that purpose. It also enables the passenger, when he has unintentionally deposited more than the amount of his fare, to call the attention of the driver to that fact, so that he, should the passenger require the difference to be paid back to him, may report the case to the proprietor or his agent on reaching the end of the route, who will then pay the difference to the passenger, who for this purpose must ride to the office at the end of the route."

The claim of the patent was thus stated:

"A fare-box having two compartments into one of which the fare is first deposited and temporarily arrested previously to its being deposited in the other, when the former is provided with openings, covered or protected by transparent media or devices, so arranged that the passengers can see through one and the driver or conductor through the other, in the manner substantially as and for the purposes set forth."

The other patent set up in the bill of complaint was granted to Elijah C. Middleton, assignee of James F. Winchell, and by the former assigned to complainant. It bore date December 12, 1871. It also was for an improvement in fare-boxes. The specification declared as follows: "This improvement relates to the mode of illuminating the interior of a fare-box in street railway cars or other vehicles when used during the night, and it consists in the construction of the fare-box with suitable openings and reflectors, arranged and adapted to receive light from the ordinary head-lamp placed above the fare-box, instead of requiring a separate lamp to illuminate it as heretofore."

The specification then described the improvement substantially thus: The ordinary fare-box, consisting of two apartments, one above the other, is constructed with an orifice in the top of the upper apartment, said top forming the floor of the lamp chamber. The orifice is closed with a sheet of glass, to prevent any access to the fare-box by that way. Immediately above the orifice there is placed in the roof of the lamp-chamber a reflector, in such an oblique position that it will cause the light which falls upon it to be thrown through the orifice into the upper apartment of the fare-box, in which the fare is temporarily deposited. The claim was stated as follows: "Lighting the interior of a fare-box at night by light obtained from the head-lamp of the

car thrown by a reflector, I, through an opening, H, in the head-lamp box, into the chamber for the temporary detention of the fare for inspection, substantially in the manner and for the purpose set forth."

The answer denied infringement of either of the improvements described in the letters-patent, denied that the persons therein named as the first inventors of said improvements were in fact the first inventors thereof, and averred that said improvements had been in public use and on sale in this country for more than two years before the applications for patents therefor were respectively made.

Upon final hearing the circuit court dismissed the bill on the ground that the improvements described in the patents were void because they did not embody invention within the meaning of the patent laws. From this decree the complainant has appealed to this court.

Mr. Justice WOODS delivered the opinion of the court.

The appellant insists that the dismissal of a bill because the inventions described in the patents were not patentable, when no such defense was set up in the answer, is of doubtful propriety, and is a practice unfair to the complainants.

The practice was sanctioned by this court in the case of *Dunbar v. Myers*, 94 U. S., 187. In that case the defense set up in the answer was want of utility in the patented invention; that the patentees were not the first inventors, &c. The circuit court rendered a decree for the complainant for a large sum. When the case came to this court the decree was reversed, with directions to the court below to dismiss the bill on the ground, not set up in the answer, that the improvement described in the patent sued on did not embody or require invention and was not patentable, and the patent was therefore void.

And in the case of *Brown v. Piper*, 91 U. S., 44, this court, speaking by Mr. Justice Swayne, said: "We think this patent was void on its face" (because the improvement described therein was not patentable), "and that the court might have stopped short at that instrument, and, without looking beyond it into the answers and testimony, *sua sponte*, if the objection was not taken by counsel, well have adjudged in favor of defendant."

We think the practice thus sanctioned is not unfair or unjust to complainants in suits brought on letters-patent. If letters-patent are void because the device or contrivance described therein is not patentable, it is the duty of the court to dismiss the cause on that ground whether the defense be made or not.

It would ill become a court of equity to render money decrees in favor of a complainant for the infringement of a patent which the court could see was void on its face for want of invention. Every suitor in a cause founded on letters-patent should, therefore, understand that the question whether his invention is patentable or not, is always open to the consideration of the court, whether the point is raised by the answer or not.

We have considered the alleged improvements described in letters-patent set out in complainant's bill, and agree with the conclusion reached by the circuit court that neither of them involves invention, and that both the letters-patent are therefore void.

A glance at the specification and claim of the patent granted to the complainant Slawson shows that the invention described therein consists simply in the placing, in the ordinary fare-box used on street cars and omnibuses, of a glass panel opposite to the glass panel next the driver, usually inserted in such boxes. The patent does not cover the fare-box, it does not cover the insertion in the side of the fare-box next the driver of a glass panel, nor a combination of these two elements. It consists merely in putting an additional pane of glass in the fare-box opposite the side next the driver, so that the passengers can through it see the interior of the box. Such a contrivance does not embody or require invention. It requires no more invention than the placing of an additional pane of glass in a show-case for the display of goods, or the putting of an additional window in a room opposite one already there. It would occur to any mechanic engaged in constructing fare-boxes, that it might be advantageous to insert two glass panes, one next the driver and the other next the interior of the car. But this would not be invention within the meaning of the patent law. *Hotchkiss v. Greenwood*, 11 How., 257; *Phillips v. Page*, 24 How., 167; *Dunbar v. Myers*, *ubi supra*. It is not a combination of the fare-box, having one glass panel with an additional glass panel, but is a mere duplication of the glass panel. Doubtless, a fare-box with two glass panels, arranged as described in the patent, is better than a fare-box with only one. But it is not every improvement that embodies a patentable invention. This rule was fairly illustrated in the case of *Stimpson v. Woodman*, 10 Wall., 117, in which it was held that where a roller, in a particular combination, had been used before without particular designs on it, and a roller, with designs on it, had been used in another combination, it was not a patentable invention.

to place designs on the roller in the first combination, and that such a change, with the existing knowledge in the art, involved simply mechanical skill, which is not patentable.

In *Brown v. Piper*, *ubi supra*, it was said, that when the invention was simply the application by the patentees of an old process to a new subject, without any exercise of the inventive faculty, and without the development of any idea which could be deemed new and original in the sense of the patent law, it was not patentable; and it was held that the application of a process for preserving meats and fruit, which had previously been used for preserving other perishable substances, was not patentable.

A case much in point was decided by this court at the present term—*The Atlantic Works v. Brady*—in which Mr. Justice Bradley said: "The design of the patent laws is to reward those who make some substantial discovery or invention which adds to our knowledge and makes a step in advance in useful arts. It was never their object to grant a monopoly for every trifling device, every shadow of a shade of an idea which would naturally and spontaneously occur to any skilled mechanic or operator in the ordinary progress of manufactures." And it was held that the placing of a screw for dredging at the stem of a screw propeller, when the dredging had been previously accomplished by turning the propeller stern foremost and dredging with the propelling screw, was not a patentable invention.

These authorities, and others that might be cited, are adverse to the appellant's case, and clearly show that the contrivance covered by the patent issued to him does not embody a patentable invention.

The same authorities apply with equal force to the patent for lighting the interior of the fare-box at night by using the head-light of the car for that purpose. The elements of the contrivance, namely, the fare-box, the head-light and the reflector, are all old. What is covered by the patent is simply the making of an aperture in the top of the fare-box and turning the rays of the head-lamp through it into the box by means of a reflector. In other words, it is the turning of the rays of light to the spot where they are wanted by means of a reflector, and taking away an obstruction to their passage. The facts of general knowledge of which we take judicial notice (*Taylor's Ev.*, sec. 4, note 2; *Brown v. Piper*, *ubi supra*) teach us that devices similar to this are as old as the use of reflectors. The new application of them does not involve invention. We are of opinion that there was nothing patentable

in the contrivance described in the second patent.

The result of our views is, that the decree of the circuit court was right and must be affirmed.

## Land Department.

Furnished by SICKELS & RANDALL.

Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

### Decision upon Review.

PLUMMER v. JACKMAN.

1. Section 2262 of the Revised Statutes construed. A pre-emptor going to the frontier along the line of projected railroads, and anticipating centres of population, though he believes the claim he selects will become of great value on account of the proximity of villages or cities, or that villages or cities will be built upon such claim, should not be held to have settled in bad faith, or for "speculative" purposes as prohibited by section 2262 U. S. Revised Statutes.
2. The agreement, if any was made, between the pre-emptor in this case and other parties, was for the purpose of raising money for the defence of the claim. It was not reduced to writing and could not be enforced against the land.
3. The Commissioner directed to call upon Plummer for a surrender of the patent issued to him under the previous decision, in order that the same may be canceled. *Myers v. Craft* (13 Wall., 291), and *Larson v. Welsbecker* (Washington Law Reporter, vol. X, page 330) cited.

DEPARTMENT OF THE INTERIOR,

WASHINGTON, May 7, 1883.

*The Commissioner of the General Land Office:*

SIR: I have considered the case of John W. Plummer et al. v. John J. Jackman, involving the S. W.  $\frac{1}{4}$  of Sec. 32, Tp. 139, R. 80 W., Bismarck, Dakota Territory.

Jackman filed declaratory statement No. 179 for said quarter section July 19, 1873, alleging settlement May 28, 1872.

Plummer filed declaratory statement No. 160 for the north half of said quarter section (with other land), June 24, 1873, alleging settlement March 28, 1873.

In May, 1875, the case of the City of Bismarck v. Hacket et al., involving the land in question, was tried at the local office, and testimony submitted touching the respective claims of Jackman and Plummer. In that case a decision (November 18, 1875) was rendered by your office, by which the N.  $\frac{1}{4}$  of said S. W.  $\frac{1}{4}$  was awarded to Plummer and the S.  $\frac{1}{4}$  to the city of Bismarck, and Jackman's filing was held for cancellation.

On appeal, Secretary Chandler, by decision of July 26, 1876, awarded the whole quarter section to Jackman, and directed all other filings and entries thereon to be cancelled.

Plummer's entry was according cancelled August 4, 1876; and subsequently certain additional homestead entries thereon were also cancelled.

A motion having been made for a rehearing, it was denied, May 11, 1877; but Secretary Schurz, by his letter of July 3, 1877, directed the local officers, when Jackman should "apply to make final proof and payment for said land, to allow any testimony which may be offered which may have a tendency to impeach his good faith in his settlement and cultivation of said tract," and to cause notice of the hearing to be given to parties claiming an interest therein.

Some subsequent proceedings were had, in consequence of a cash entry made by Jackman; but the hearing under the order of July 3, 1877, was held at Bismarck, in September, 1877, and due notice thereof given to the parties in interest, and the proceedings and testimony were returned to your office.

August 27, 1879, Acting Commissioner Armstrong reported the case to this Department, accompanied by his opinion. He states that "the evidence is so conflicting that it is impossible to ascertain the exact truth," but concludes that Jackman's claim "was not originally made in good faith", but was made for "speculative purposes." He further found that Plummer had abandoned the land, and recommended that the entries of both Plummer and Jackman should be cancelled.

After the decision of July 26, 1876, Plummer made application for repayment of purchase money, which he subsequently withdrew; but in 1877 he renewed it. This application at the time of the decision of January 16, 1882, hereafter mentioned, was still pending.

My predecessor examined the case and rendered a decision therein January 16, 1882, in effect affirming the decision of Acting Commissioner Armstrong as to the want of good faith on the part of Jackman, and holding his entry for cancellation; but directing Plummer's entry as to the north half of said tract to be reinstated and patented, and his application for repayment to be rejected.

April 7, 1882, an application was made to my predecessor for a reconsideration of his said decision. Such application (having been found to be still pending) was granted by me; and April 11, 1883, an oral argument upon the merits was had before me by counsel for the respective parties.

Upon this statement of the proceedings in the case it will be seen that the only issue presented and now to be determined is that

which was made by the letter of Secretary Schurtz of July 3, 1877, before quoted, viz., whether Jackman made his "settlement and cultivation" of the tract "in good faith."

My predecessor, Secretary Kirkwood, in his decision states that he does "not deem it necessary to recite or sum up the very voluminous testimony touching the validity of Jackman's claim," but states his conclusion from an examination of the testimony, viz.: "That Jackman's settlement was made in bad faith; in other words, he settled upon and improved the land in contest, so far as he settled or approved it at all, for the purpose of speculation, and not in good faith, to appropriate the same to his own exclusive use." The decision states that such conclusion "is reached very reluctantly on account of the valuable improvements placed by Jackman on the south half" of the tract.

Since the issue presented is one mainly of fact, I shall review to some extent the testimony taken upon the issue, and consider its bearing on the question of Jackman's good faith.

The law upon which this issue was framed, for the purpose of inquiring whether it has been violated, is presumed to be that part of section 2262 of the Revised Statutes which declares that the person claiming the benefit of the pre-emption laws shall, before being allowed to enter lands, make oath (among other things) "that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatever, by which the title which he might acquire from the United States should inure in whole or in part to the benefit of any person except himself."

The charge that Jackman made claim to the land in bad faith, and for the purpose of speculation, rests mainly in certain agreements, the first of which is alleged to have been made between Jackman, Woods, Richards, Churchill, and Sanburn, at Moorhead, Minn., in March, 1872, to the effect that such parties should go to a point on the Missouri river where it was supposed the Northern Pacific railroad would cross the river, and there locate claims, with the view that a town would be built at such crossing, and thereby the lands would be greatly enhanced in value—such claims to be held as the common property of the parties to the agreement. The alleged agreement was not in writing, and the testimony as to whether it was ever made is painfully conflicting.

The burden of proof is upon the party alleging the agreement, and it should be made out by a fair preponderance of evidence.

The testimony shows that an arrangement was made between such persons, or such persons and two or three others, to go together to make a settlement at a point upon the river, at or near which they believed the road would cross and a town be built, and they united to some extent, at least, in making up an outfit for the long journey through and settlement in an unoccupied country. Such union was, however, a matter of necessity, since some of the party were destitute of money to purchase supplies, but possessed teams or other property essential to the success of the journey and settlement, and others had the necessary means for other purposes. It is needless to say that such a union for mutual protection and support is of common occurrence, and of itself affords but slight evidence of an agreement to hold in common the lands to be taken up.

The testimony upon this part of the case, and upon the subject of locating at a point where the railroad would cross, occupies a large space in the record; and I think unnecessary weight was given to it. The evidence as to an agreement that the claims so to be taken up by each of the parties should in fact be the common property of all, is indefinite, uncertain, contradictory, and, I think, does not preponderate in favor of such an agreement.

Whatever might be the difference of opinion upon that question, it is, I think, certain that such agreement was never in fact acted upon so far as the lands were concerned, nor was it insisted upon by any members of the party in reference to the land which each undertook to acquire; and the project, if it ever existed, may justly be regarded as having been wholly abandoned at the time each party came to take the necessary legal steps to acquire title to the land constituting his claim.

As proof of this I refer briefly to a few points in the testimony.

Jackman did not go to the river at the same time with the others, but followed some weeks afterwards. One Cory, who went with the party, claimed to have been hired by Jackman to represent him, and to take up and hold a claim for him. He swears that Jackman told him that Richards, one of the parties, would locate him on a claim he was to hold for Jackman. Cory took up a claim and built upon it. When Jackman came he did not take the Cory land, and never made any claim to it; but took the claim now in con-

troversy. Cory, who was called by contestants, testifies that Jackman made claim to no other land than that still claimed by him. McKellar and Chase, who went and took up claims representing Sanburn and Churchill, two of the original parties, abandoned their claims early in 1872. Woods, who first settled upon the land in controversy, abandoned his claim and left the country in May, 1872; and Richards' claim proved to be upon an odd section.

It was claimed that the lands were taken up at that particular point on account of superior knowledge possessed by Jackman that the railroad crossing would be at such point and a town would be built there.

The evidence shows that the location at that time was uncertain, and that, in fact, in the summer and fall of 1872, the road was located, and partially graded, some three miles further south, but subsequently changed to its present location. Jackman, when upon the stand as a witness in this controversy, as late as November, 1877, testifies that he does not believe that anyone then knew where the road "was going to cross the Missouri river." Yet it is the uncontradicted testimony in the case that at that time he had lived upon the land in controversy some five years, having no other home, and had made valuable and extensive improvements.

Jackman testifies fully and explicitly that he took up the land for his own exclusive use, with the intention of making of it a permanent home, and that he has no other; and he denies the agreement to hold the lands in common. In this denial he is strongly corroborated by the fact that the various claims which would have constituted the common property were regarded and treated by the parties themselves as individual property, and no joint ownership was ever claimed.

If all the testimony relating to the agreement were uncontradicted, it is of so indefinite and uncertain a character (if the case presented no other legal obstacle, that I do not think it would be sufficient to authorize a court of equity to partition the Jackman claim and other lands, if they had been acquired, among the parties to the alleged agreement.

The fact that Jackman has lived upon the land as a home for so long a period is strongly corroborative of his own testimony that he settled upon the land for the purpose of making a home, and not "for the purpose of speculation."

The statute referred to cannot be construed to mean that persons going to the frontiers, or along the lines of projected

railways, and anticipating centres of population, shall not enjoy the benefits of their enterprise and foresight, though they believed that their claims would become of great value on account of the proximity to villages or cities, or that villages or cities would even be built upon such claims, and thereby enable them ultimately to realize large prices for such lands. That is not the "speculation" that the statute intended to prohibit.

In *Myers v. Croft*, 13 Wall., 291, Mr. Justice Davis, commenting upon the causes that led Congress to pass the statutes above cited, says: "It had been the well defined policy of Congress, in passing these laws (pre-emption) not to allow their benefit to enure to the profit of land speculators; but this wise policy was often defeated. Experience has proven that designing persons, being unable to purchase valuable lands, on account of their withdrawal from sale, would procure middlemen to occupy them temporarily, with indifferent improvements, under an agreement to convey them as soon as they were entered by virtue of their pre-emption rights. When this was done and the speculation accomplished, the lands were abandoned. This was felt to be a serious evil; and Congress, in the law under consideration, undertook to remedy it by requiring of the applicant for a pre-emption, before he was allowed to enter the land on which he had settled; to swear that he had not contracted it away, nor settled upon it to sell it on speculation, but in good faith to appropriate it to his own use."

I think it is quite clear under the facts in this case, that it does not fall within the class of cases prohibited by the statute.

There is another branch to this case (upon which a large amount of testimony even more conflicting has been taken), which briefly stated is as follows:

Jackman testifies that, in the fall of 1873, Ed. Hackett and John W. Proctor were pre-emptors on the northwest and northeast quarters of section 4, Tp. 138 N., R. 80 W.—the whole of both of these claims being covered by the original town-site of Bismarck; that these claims were in contest, and Hackett and Proctor applied to Jackman to assist them in defending them, that Jackman agreed to advance money and assist them in such defence, and as soon as their claims were proved up and they were in condition to do so, they were to pay to him double the money he should expend in their behalf; that thereupon he made an arrangement with James J. Hill, of St. Paul, by which Jackman was to give to Hill one-half of the money that he should receive from Hackett, and one-third

of what he should receive from Proctor, in consideration that Hill should furnish him one-half the money he should expend in the defence of such claims. It appears that one Robbins subsequently became interested with Hill in the arrangement.

Hill's version of the matter substantially agrees with that of Jackman as to the arrangement to advance money; but he testifies that Jackman said he "was to have half of 160 acres, and was to give him (Hill) half of his half;" and that, at a subsequent time, Jackman, in order to make him and Robbins more secure for further advances, stated that "there was very little contest on his own claim," (being the land now in question), and that "he would put it also into the transaction and give us half of whatever he got for himself or from either of the others."

It will be borne in mind that this transaction was some time after Jackman had filed his declaratory statement and made settlement upon the land now in dispute. It is not proved to my satisfaction that Jackman's own claim entered at all into the agreement; but conceding the transaction to have been as related by Hill, I do not think it can be construed into an agreement by Jackman to convey the title of his own claim which he might receive from the government, or any part of it, to Hill. The agreement was not in writing. It was at best an agreement to raise money for the defence of the claim. It could not have been enforced against the land.

In *Larson v. Weisbecker*, (9 Copp. 60,) it was held that a mortgage given by the pre-emptor upon the land was not an alienation, nor such an agreement as was prohibited by the section of the Revised Statutes under consideration. In that case it was held that "the statute under consideration requires from a pre-emptor, in my opinion, in order to the defeat of his entry a contract by force of which title to the land must vest in some other person than himself; and it must appear that such was his intention at the time of making it."

I am of the opinion that Jackman had a legal right to the whole of said southwest quarter of section thirty-two, and that it should have been awarded to him.

After the said decision of January 16, 1882, to wit, on the 20th day of April, 1882, a patent was issued to Plummer for the north half of said quarter section.

I therefore direct that the order of January 16, 1882, directing that Jackman's entry be canceled, be revoked: that a demand be made of Plummer that he surrender for can-



cellation the patent so issued to him, in order that a patent may be issued to Jackman for the whole of said southwest quarter. In case of refusal of said Plummer to surrender such patent, you will report such refusal to this department, in order that such further action may be taken as may be deemed to be proper.

The papers filed upon the motion for review are transmitted herewith.

Very respectfully,

H. M. TELLER,  
Secretary.

SICKELS & RANDALL and DRUMMOND & BRADFORD, attorneys for Jackman.

## The Courts.

### U. S. Supreme Court Proceedings.

MAY 7, 1883.

The following gentlemen were admitted to practice during the past week:

Willard Teller, of Denver, Col.; Paul Goepel, of New York City; Preston Stevenson, of New York City; David B. Lymon, of Chicago, Ill.

No. 13. Original ex parte. In re Devoe Manufacturing Co. Petition for writ of prohibition denied. Opinion by Mr. Justice Blatchford.

No. 268. George H. Warren et al. v. William King et al. From C. C. U. S., D. of Indiana. Decree affirmed. Opinion by Mr. Justice Blatchford.

No. 1126. Thos. Cochran et al. v. Augustus Schell, late collector, etc., and

No. 1127. Augustus Schell, collector, etc., v. Thos. Cochran et al. Motion to reform judgment and mandate denied. Opinion by Mr. Justice Blatchford.

Motions to recall mandates and reform judgment were denied in the following causes on docket of October Term of 1881: Nos. 109, 122, 134, 136. Opinion by Mr. Justice Blatchford.

No. 216. Wm. G. Gage et al. v. James W. Her-ring et al. From C. C. U. S., N. D. N. Y. Decree reversed and bill dismissed. Opinion by Mr. Justice Gray.

No. 294. M. E. Post v. John B. Pierson. To the S. C. Territory of Dakota. Judgment affirmed. Opinion by Mr. Justice Gray.

No. 266. Samuel Clark, general treasurer, &c., et al., v. George M. Barnard et al., assignees, &c. From C. C. U. S., D. of Mass. Decree reversed and cause remanded. Opinion by Mr. Justice Matthews.

No. 261. W. J. Hawkins et al., assignees, &c., v. Grinnell Blake et al. From C. C. U. S., E. D. of N. C. Decree affirmed. Opinion by Mr. Justice Matthews.

No. 258. J. J. Manning et al. v. The Cape Ann Isinglass and Glue Co. et al. From C. C. U. S., D. of Mass. Decree affirmed. Opinion by Mr. Justice Woods.

No. 257. Robert L. Downton v. The Yaeger Milling Co. From C. C. U. S., E. D. of Missouri. Decree affirmed. Opinion by Mr. Justice Woods.

No. 286. The Wabash R. R. Co. v. John McDaniels. To C. C. U. S., D. of Indiana. Judgment affirmed. Opinion by Mr. Justice Harlan

No. 224. J. Gross v. The U. S. Mortgage Co. To S. C. State of Illinois. Decree affirmed. Opinion by Mr. Justice Harlan.

No. 244. The Omaha Hotel Co. et al. v. Augustus Kountze et al., and

No. 247. Augustus Kountze et al. v. The Omaha Hotel Co. et al. To C. C. U. S., D. of Nebraska. Judgment reversed. Opinion by Mr. Justice Bradley.

No. 273. The District of Columbia v. C. H. Armes, administrator, &c. To S. C. District of Columbia. Judgment affirmed. Opinion by Mr. Justice Field.

No. 203. The Conn. Mut Life Ins. Co. v. Leopold Luchs. To S. C. District of Columbia. Judgment affirmed. Opinion by Mr. Justice Field.

No. 272. The United States v. 43 gallons of whiskey, etc., B. Lariviere et al., claimants. To C. C. U. S., D. of Minn. Judgment reversed and new trial awarded. Opinion by Mr. Justice Field.

No. 219. The Western Pacific R. R. Co. et al. v. The United States. From C. C. U. S., D. of California. Decree affirmed. Opinion by Mr. Justice Miller.

No. 280. Sarah E. Vance et al. v. Sarah E. Vance, executrix, &c., et al. To S. C. State of Louisiana. Judgment affirmed. Opinion by Mr. Justice Miller.

No. 135. Neal Ruggles v. The People of the State of Illinois. To S. C. State of Ill. Judgment affirmed. Opinion by Mr. Chief-Justice Waite.

No. 241. The Illinois Central R. R. Co. v. The People of the State of Illinois. Same. Same. Same.

No. 1230. Ex parte. In re Tom Tong. Division in opinion between the judges. C. C. U. S. D. of California. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 11. Original Ex parte. In re Hung Hang. Petition for writ of habeas corpus denied. Opinion by Mr. Chief-Justice Waite.

No. 229. Patrick G. Meath v. The County of Philip. From D. C. U. S., E. D. Arkansas. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 263. James A. Hawley, county clerk Lee county, v. The United States, ex rel. J. H. Fairbanks et al. To C. C. U. S., W. D. of Ill. Remanded to modify judgment, &c. Opinion by Mr. Chief-Justice Waite.

No. 274. The State of Louisiana, ex rel. The New Orleans Gaslight Co. v. The Council of the City of New Orleans et al. To S. C. State of Louisiana. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 288. J. W. Scarborough, tutor, &c., v. John F. Fargoad. To S. C. State of Louisiana. Dismissed. Opinion by Mr. Chief-Justice Waite.

No. 1244. The New Jersey Zinc Co. v. Charles W. Trotter. To C. C. U. S., D. of New Jersey. Dismissed for want of jurisdiction. Opinion by Mr. Chief-Justice Waite.

No. 15. Original Ex parte. In re The Baltimore & Ohio R. R. Co. Petition for writ of mandamus denied. Opinion by Mr. Chief-Justice Waite.

No. 1081. John B. Gibson v. Charlotte Bruce. From C. C. U. S., S. D. of Ohio. Decree affirmed. Opinion by Mr. Chief-Justice Waite.

No. 856. Delinzo A. Walden v. S. W. Knevals, and

Ex parte. In re Albert Grant, petitioner. Motions denied. Announced by Mr. Chief-Justice Waite.

No. 225. *Mary Boro et al. v. The County of Phillips*. Writ of certiorari awarded. Announced by Mr. Chief-Justice Waite.

No. 788. *The Steamship Belgenland, etc., v. Theodore Jensen, master, &c.* Motion to release stipulators denied. Announced by Mr. Chief-Justice Waite.

*Ex parte*. In re *Wintrop Iron Co. et al.* Rule to show cause granted. Announced by Mr. Chief-Justice Waite.

The Chief-Justice announced the following :

"*Ordered*, That rule one in reference to appeals from the Court of Claims be and the same is hereby made applicable to appeals in all cases heretofore or hereafter decided by that court, under the jurisdiction conferred by the act of June 16, 1880, chapter 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes."

No. 514. *The City of Philadelphia et al. v. The International Navigation Co.* From C. C. U. S., E. D. Penna. Dismissed per stipulation.

No. 371. *A. F. Hubbell et al. v. Theodore Comstock et al.* From C. C. U. S., S. D. of Ohio. Same.

Adjourned *sine die*.

#### EQUITY COURT.—Justice James.

APRIL 4, 1883.

*Lord v. O'Donoghue*. Trustee to report sale to court.

*Fitzgerald v. Kennedy*. Sale set aside.

*Saunders v. Brown*. Decree pro confesso against defendant Herrick, trustee.

APRIL 5, 1883.

*Ward v. Hill*. Decree pro confesso against certain defendants ordered.

*McNalley v. Ward*. Same against both defendants.

*Lockwood v. Brown*. Fund ordered to be distributed.

*Vail v. Vail*. Further testimony ordered taken.

*Nallor v. Nallor*. Receiver directed to make repairs.

*Riley v. Cox*. Injunction denied and rule discharged.

*Barber v. Gilmore*. Bill dismissed as to Riggles.

*Holmead v. Esline*. Sale set aside and decree modified.

APRIL 6, 1883.

*Worthington v. Reed*. Sale confirmed nisi.

*Creesy v. Cranford*. Dismissal of bill ordered.

*Shoemaker v. Campbell*. Guardian ad litem appointed.

*Shiner v. Shiner*. Payment to guardian ordered.

*Wilson v. Bradley*. Restraining order discharged.

*Hanna v. Pendleton*. Offer to lease authorized to be accepted.

*Davis v. Key*. Commission to take testimony ordered to issue.

*Lord v. O'Donoghue*. Sale ratified nisi.

*Heltmuller v. Olmstead*. Sale ordered by trustees.

APRIL 7, 1883.

*Burns v. Cochran, and Bell v. Marekin*. Sale ordered and trustees appointed to sell.

*Ofutt v. King*. Auditor's report finally ratified.

*York v. Main*. Demurrer sustained with leave to amend.

*Stroud v. Stroud*. Testimony before examiner ordered taken.

*Stevenson v. Eaton*. Substitution of trustees ordered.

JUSTICE CARTER.

APRIL 3, 1883.

*Paschall v. Main et al.* Bill dismissed.

*Reynolds v. Reynolds*. Decree of divorce ordered.

*Patch v. Davis*. Cause referred to auditor.

*Kendick v. Kendick*. Decree of divorce ordered.

*Combe v. Roberts et al.* Decree pro confesso against Roberts.

APRIL 5, 1883.

*Combo v. Roberts et al.* Decree pro confesso set aside with leave to enter appearance.

*Kieseckeo, by next friend, v. Kieseckeo*. Decree of divorce ordered.

*Janin v. Gilmore*. Auditor's report referred to General Term.

APRIL 6, 1883.

*Keyser, receiver, &c., v. Friedrich et al.* Sale ordered to satisfy judgments and trustee appointed to sell, &c.

*Douglass v. Langford et al.* Decree pro confesso confirmed and trustee directed to sell Langford's interest as per died.

*Malihan et al. v. Waggamon et al.* Sale set aside and trustees ordered to sell at public auction.

APRIL 7, 1883.

*Frederich v. Christiani et al.* Note and deed of trust declared void.

APRIL 9, 1883.

*Thatcher v. Thatcher*. Divorce decreed.

*Cole v. Cole*. Same.

*Weiner v. Wernehl*. Certified to be heard in the first instance to General Term.

APRIL 10, 1883.

*Bailey v. Edwards*. Decree ordered.

*Turton v. Saunders*. Same.

*Kennedy v. Stewart*. E. Carusi appointed to make conveyance.

APRIL 11, 1883.

*Henson v. Hill*. Bill dismissed.

*Morrison v. Rutherford*. Certified to the General Term.

*Shepherd v. T. S. & T. Co., and Thompson v. Shepherd et al.* Consolidated. Additional testimony permitted to be taken.

*Bulkley, adm'r, v. Edward et al.* Ordered that balance of fund be paid to administrator.

*Barnett v. Moran's Heirs*. Mistake in name of trustee rectified.

*Morrison v. Rutherford*. Cause certified to General Term.

*Dunlop v. Cutting*. Decree ordered.

APRIL 13, 1883.

*Barker v. Henry et al.* Preliminary injunction made perpetual.

*Davis, adm'r, v. Key*. Cause certified to General Term.

*Main, trustee et al., v. Hyde et al.* Bill dismissed as to Riggs' executor.

*Same v. Same*. Deed declared null and void.

*Vail v. Vail*. Divorce granted.

APRIL 14, 1883.

*Groot et al. v. King et al.* Commission to take testimony in New York City ordered.

*Henson et al. v. Hill et al.* Deed declared good and receiver directed to file account.

*Same v. Same*. Ward ordered to pay surplus to Blanchford.

## JUSTICE MAC ARTHUR.

APRIL 3, 1883.

Wilson v. Wilson. Divorce a vinculo matrimonii decreed.

Kaiser v. Cissell et al. Guardian ad litem appointed.

APRIL 5, 1883.

Coughlin v. The Conn. Mut. Life Ins. Co. Bill dismissed.

Yingling v. Yingling. Divorce a vinculo matrimonii decreed.

Stewart v. Stewart. Divorce decreed.

APRIL 6, 1883.

Talberg v. Beltor et al. Lien adjudged and execution ordered.

Campbell v. Boss et al. Referred to auditor.

Harkness, trustee, v. Ryon et al. Conveyance declared valid, &c.

Douglass, alias Franklin, v. Douglass. Divorce a vinculo matrimonii decreed.

APRIL 9, 1883.

Dutch v. Dodge. Order to file proof.

Clark v. Krouse. Decree declaring lien and reference.

Noyes v. Gray. Auditor's report confirmed.

Newburn v. Washington. Bill ordered dismissed.

Bradley v. Bradley. Divorce decreed.

APRIL 10, 1883.

Williams v. Williams. Trustees ordered to distribute proceeds of sale.

Craig v. Craig. Sale decreed.

Talberg v. Beltor. Defendant's undertaking to General Term approved.

Walter v. Ward. Certified to be heard at General Term.

Hoover v. Moore. Demurrer overruled.

Woodruff v. Nat. Shelf and File Co. Time given to take proof.

Dutch v. Dodge. Bill dismissed.

McCoy v. Fowler. Argued and submitted.

Dodd v. Dodd. Divorce decreed.

APRIL 11, 1883.

The Phoenix Mut. Ins. Co. v. Grant et al. Writ of assistance ordered. Rules against Blair and Pugh returnable April 23, 1883.

Evans et al. v. Church et al. Restraining order issued until further orders.

Dunlop v. Cutting et al. Decree pro confesso made final; title vested in plaintiff.

APRIL 12, 1883.

Eustrich v. Eustrich. Publication ordered.

Mackall v. Richards. Bill dismissed.

Auld et al. v. Cooke et al. Bill taken as confessed against Sprague and Hoyt.

APRIL 13, 1883.

Phillips et al. v. Carney et al. Permission granted to withdraw exhibit.

APRIL 14, 1883.

McCoy v. Fowler et al. Park fence ordered to be removed to point designated.

## CRIMINAL COURT NO. 2.—Justice Hagner.

APRIL 10, 1883.

U. S. v. Frank Minor. Motion for new trial.

APRIL 11, 1883.

U. S. v. Chas. Hamilton. Indicted for the murder of Geo. A. Hill. The trial of Hamilton occupied the court until April 13, when the jury, not being able to agree, were discharged.

APRIL 14, 1883.

U. S. v. Joseph Harbour. Sentenced in two

cases of receiving stolen goods to be confined in the jail six months in each case, one to take effect after the expiration of sentence in the other.

APRIL 18, 1883.

U. S. v. Wm. Parker. Information for assault. Plead guilty. Sentenced to be confined in jail for 50 days.

U. S. v. Robert Wedge. Information for larceny. Plead guilty. Sentenced to be confined until May 15, 1883.

APRIL 19, 1883.

U. S. v. Mary Smith. Information for larceny. Verdict not guilty.

U. S. v. Nat. Butler, &c. Indicted for house breaking in night. Plead guilty. Sentenced to the penitentiary for five years.

U. S. v. Nat. Hawkins, &c. Indicted for house breaking in day. Plead guilty. Sentenced to the penitentiary for five years.

U. S. v. Joseph Bailor, &c. Indicted for second offense petit larceny. Plead guilty. Sentenced to the penitentiary for one year.

U. S. v. Wm. H. Cunningham. Indicted for embezzlement. Plead guilty. Sentenced to jail for forty days.

U. S. v. Charles Jackson, etc. Indicted for house breaking in night. Plead guilty. Sentenced to the penitentiary for four years.

U. S. v. Lafayette Allison. Indicted for house breaking in night. Plead guilty. Sentenced to the penitentiary for seven years.

U. S. v. Charles Dent. Information for a disorderly house. Plead guilty. Sentenced to pay \$25 and costs.

APRIL 23, 1883.

U. S. v. Wm. Townsend. Information for larceny. Verdict not guilty as indicted, but guilty of petit larceny. Sentenced to be confined in jail for 6 months.

U. S. v. Henry Scott. Indicted for house breaking in night. Plead guilty. Sentenced to the penitentiary for two years.

U. S. v. Wm. H. Hooper. Indicted for embezzlement. Verdict not guilty.

U. S. v. James White, &c. Indicted for larceny. Verdict guilty.

U. S. v. Wm. Jones. 2 cases for larceny. Nol. pros.

APRIL 24, 1883.

U. S. v. Joshua Anderson. Indicted for the murder of James Carr. Trial occupied until April 27, when the jury brought in a verdict of guilty of manslaughter.

APRIL 26, 1883.

U. S. v. James White. Convicted of grand larceny. Motion for a new trial.

APRIL 30, 1883.

U. S. v. Robert Lee, &c. Indicted for house breaking in night. Two cases. Plead guilty. Sentenced to the penitentiary for seven years in first case, in other for one year after the expiration of sentence in first.

U. S. v. Wm. F. Keys. Indicted for perjury. Verdict guilty. Sentenced to the penitentiary for two years.

U. S. v. Francis Cronin, &c. Indicted for house breaking in night. Verdict guilty. Sentenced to the penitentiary for three years.

U. S. v. Walter Gordon. Information for larceny. Verdict not guilty.

U. S. v. Charles E. Williams. Indicted for house breaking in night. Verdict guilty. Sentenced to the penitentiary for 5 years.

MAY 1, 1883.

U. S. v. Patrick McNulty and James Reynolds. Indicted as accessories before the fact of rape. Nol pros.

U. S. v. Georgeana Walker, etc. Indicted for larceny. Verdict guilty. Sentenced to the penitentiary for two years.

U. S. v. Edward Johnson and John Hudson. Indicted for house breaking in day. Verdict guilty as to Johnson and not guilty as to Hudson.

U. S. v. Lafayette Allison. Convicted of house breaking in night. Sentence set aside and sentenced to the penitentiary for two years and six months.

MAY 2, 1883.

U. S. v. Thos. Mackey. Indicted for second offense of petit larceny. Verdict not guilty.

U. S. v. Lucy A. Williams. Indicted for larceny. Verdict guilty. Sentenced to the penitentiary for two years.

U. S. v. Wm. White, etc. Indicted for larceny. Verdict guilty. Sentenced to the penitentiary for three years.

U. S. v. Joseph M. Baird. Indicted for second offense petit larceny. Two cases. Jury not able to agree; discharged.

U. S. v. Frank Williams. Indicted for second offense petit larceny. Plead guilty. Sentenced to jail for six months.

U. S. v. Charles Smith. Indicted for second offense petit larceny. Plead guilty of petit larceny, which plea was accepted. Sentenced to jail for six months.

MAY 3, 1883.

U. S. v. Frederick Blackwell. Indicted for second offense petit larceny. Verdict not guilty.

U. S. v. Thos. Overton. Indicted for second offense petit larceny. Plead guilty. Sentenced to jail for six months.

U. S. v. Charles Chase and James Waters. Indicted for house breaking in night. Verdict guilty on the first count and not guilty on the second.

MAY 4, 1883.

U. S. v. Edward Johnson and John Hudson. Indicted for house breaking. Verdict guilty as indicted.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

MAY 4, 1883.

24436. Fred. A. Allen v. The B. & G. E. R. Co. Certiorari. Piffs atty, W. Wheeler. Defts attys, Merrick and Larner.

24437. Geo. W. Cochran & Co. v. John O'Neal. Judgment of Justice Taylor, \$64.99.

24438. Grayson & Cain v. William R. Schooler. Note, \$11.30. Piffs attys, Carusi & Miller.

24439. William M. King v. Edwin J. Sweet. Notes, \$1,175. Piffs atty, O. H. Armes.

MAY 5, 1883.

24440. Jacob H. Kengla v. Jos. A. B. Wiseman. Note, \$442.75. Piffs attys, Carusi & Miller.

MAY 7, 1883.

24441. B. J. Carley & Bro. v. John Larkins. Judgment of Justice Taylor, \$20.12.

MAY 8, 1883.

24442. George M. Oyster & Co. v. Harrison Williams. Account, \$143.62. Piffs attys, Hanna & Johnston.

MAY 9, 1883.

24443. Samuel R. Turner v. Mary Silverberg. Appeal. Piffs attys, B. H. Webb.

24444. Wm. A. Stuart & Co. v. Ben Holladay. Account, \$320. Piffs atty, B. Zevely.

24445. Wm. A. Stewart & Co. v. Ben Holladay. Account, \$320. Piffs atty, B. Zevely.

24446. Wm. Galt & Co. v. John Dowling. Note, \$311.18. Piffs attys, Riddle, Davis & Padgett.

24447. Same v. Chas. E. Greer. Acc't, \$297.00. Piffs atty, same.

24448. Same v. John Dowling. Acc't, \$190.25. Piffs atty, same.

MAY 10, 1883.

24449. Kerr & Co. v. Emily Lulley. Account, \$55. Piffs atty, O. M. Matthews.

24450. Jas. L. Barbour v. Stephenson & Bro. Appeal. Piffs attys, Carusi & Miller. Defts atty, J. G. Payne.

24451. The United States v. Geo. Hill, Jr. Acc't, \$4554.11. Piffs atty, Geo. B. Corkhill.

24452. Chas. S. Beebey v. John Seufort. Account, \$493.37. Piffs attys, Birney & Birney.

24453. John Salmon v. Thomas A. Gallagher et al. Damages, \$10,000. Piffs atty, N. H. Miller.

24454. George J. Butt v. Moses Solomon. Appeal. Defts attys, Birney & Birney.

MAY 11, 1883.

24455. Patrick J. Shannon et al. v. Thos. E. Snelbaker. Notes and account, \$154.00. Piffs attys, Ross & Dean.

24456. Atkinson Bros. v. Victor G. Fisher. Account, \$135.91. Piffs attys, Ross & Dean.

24457. Phoenix Mutual Life Insurance Company v. Benjamin F. Butler et al. Bond, \$15,000. Piffs attys, Mattingly & Merrick.

### IN EQUITY.—New Suits.

APRIL 30, 1883.

8538. Julia B. Bomar v. Robert H. Bomar. For divorce. Com. sol., R. B. Carpenter.

8539. Cassimer Bohn v. John Foy et al. To confirm division of lot 8, sq. 575. Com. sol., J. McD. Carrington.

MAY 1, 1883.

8540. Jacob Lerch v. Wm. B. Moses et al. For an acc't. Com. sols., Hine and Thomas.

8541. Joseph McDonald v. Katie McDonald. For divorce. Com. sol., L. I. O'Neal.

MAY 2, 1883.

8542. Patrick R. Byrne v. Maria Byrne. For divorce. Com. sol., A. K. Browne.

8543. John O. Harkness v. William Duvall et al. Creditors' bill. Com. sol., R. Fendall.

8544. Maria Byrnes et al. v. Robert McDonald et al. To set aside will. Com. sol., I. G. Kimball.

MAY 3, 1883.

8545. Maurice Gandy v. H. M. Teller, Secretary of the Interior et al. For patent. Com. sol., Amos Broadnax.

8546. Eleanor A. S. Bush et al. v. Lewis H. Stanton et al. For new trustee. Com. sol., J. O. Heald.

MAY 4, 1883.

8547. Anton Remy v. Clara Remy. For divorce. Com. sol., A. B. Williams.

8548. The Alexandria Canal, Railroad and Bridge Co. v. The District of Columbia. Com. sol., M. M. Wells.

MAY 5, 1883.

8549. Ex parte, The Capital, North O Street & South Washington R. R. Co. To fix terms, &c. Com. sols., Hine and Thomas.

8550. Arthur J. Rooney v. Mary Rooney. For divorce. Com. sol., J. A. Smith.

8551. Alice W. Follin v. John Goldin et al. For partition. Com. sol., D. W. Glusie.

8552. Margaret McNamara v. Thos. Collins et al. Discovery and account. Com. sol., B. T. Hanley.

MAY 8, 1883.

8553. Emily Roys v. Chase Roys. For divorce. Com. sol., P. E. Dye.

MAY 9, 1883.

8554. Emma J. Sweeny v. Walter P. Sweeny. For divorce. Com. sol., Thomas F. Miller.

8555. German American Savings Bank, upon petition of B. U. Keyser, Receiver. To compound certain indebtedness of Adolf Oluss. Com. sol., B. U. Keyser.

MAY 10, 1883.

8556. George G. Bradley et al. v. Catherine Keiss et al. To correct deed. Com. sol., A. C. Bradley.

8557. Emma J. Wininger et al. v. William B. Dougherty. To sell infants' real estate. Com. sols., Birney & Birney.

8558. Daniel Mason v. Rachel Mason et al. For sale. Com. sols., Carusi & Miller.

### PROBATE COURT.—Justice Cox.

APRIL 21, 1883.

Estate of Francis B. Boyle. Final account of executor.

Estate of Anna M. Habermann. Final account of adm'r.

Estate of James H. Stone. Final account of adm'r.

Estate of Fanny M. Sutherland. Final account of ex'r.

Estate of Edward T. Tayloe. First account of executor.

Samuel Key. Final account of guardian.

Joseph Roemmele. Twelfth account of guardian.

Sarah S. Stone, guardian. General and personal acc't.

APRIL 24, 1883.

Estate of Jacob W. Kert; publication of notice ordered.

Estate of John M. Johnson; assent of son filed.

Estate of James O. Reid; petition for letters of administration.

Estate of Mary F. Woods; will proved by two witnesses, publication ordered.

Estate of Abby L. Bodfish; petition for letters of administration.

Estate of J. Erhard Mack; administrator qualified and bonded.

Estate of S. Louisa Yeabower; same.

Anna A. C. Welcker, guardian; general and individual account passed.

APRIL 25, 1883.

Estate of Chas. A. Watts; executor bonded.

Estate of William D. Aiken; petition of administrator to transfer bonds to him.

APRIL 26, 1883.

Estate of Loyal Cowles; renunciation of next of kin filed.

Estate of Wm. R. Russell; petition of creditor for letters, and widow cited.

Florence B. Koonen, guardian; filed an additional bond.

Charles F. Rowe, guardian; petition for services.

APRIL 28, 1883.

Estate of Mary A. Staffan; issues ordered to Circuit Court for trial.

Charles F. Rowe, guardian; order for allowance passed.

Estate of Martha E. Popkins; bond of administrator completed and letters issued.

Estate of Loyal Cowles; administrator appointed and bonded.

Estate of J. L. Waldrop; proof of publication filed, administrator qualified and bonded.

Estate of Wm. D. Aiken; petition of United States, for bonds, order to turn over funds; to guardian when bonded.

Estate of Wm. B. Kibbey; five per cent. commission allowed to executor.

Frank T. Browning, guardian; order for allowance and support of wards.

Kate Marr, guardian; first report and account passed.

Florence B. Koonen, guardian; second account passed.

APRIL 30, 1883.

Will of Wm. Metcalf Burchard; filed.

Estate of Richard Winfield; petition for a citation on administratrix filed.

Estate of Mary E. Magruder; renunciation of party filed

Estate of Moses Ogle; administrator bonded and letters granted.

MAY 1, 1883.

Estate of George C. Garrison; inventory returned by executrix.

Estate of Matthew Aiken, jr.; notice of appeal.

Will of Fisher A. Foster; filed and fully proven, petition for letters and order of publication.

Will of Alfred F. Pollard; filed and proved.

Estate of Garrett Barry; final notice to administrator for settlement.

Estate of Wm. R. Russell; letters granted ad colligendum.

MAY 2, 1883.

Estate of Wm. B. Kibbey; receipts of distributees filed.

MAY 3, 1883.

Estate of Wm. M. Burchard; petition of executor for probate and letters.

Will of Eliab Kingman; second codicil proved by one witness.

MAY 4, 1883.

Will of Eliab Kingman; proved by all the witnesses, proof of publication filed and executor bonded.

Estate of Anthony Buchly; account of administrator c. t. a., and petition for allowance of commission filed.

Will of John N. Lovejoy; filed and proved by surviving witnesses.

Will of Wm. M. Burchard proved by two witnesses.

In re Will of Geo. W. Collins; petition of letters and citation against widow and minor daughter.

Estate of Geo. N. Hopkins; petition of party to have accounts settled.

MAY 5, 1883.

Estate of Anthony Buchly; accounts of administrator c. t. a. passed and compensation of administrator fixed.

Estate of Mary Duvall; administrators qualified and bonded.

Estate of Isaac Delano; proof of publication and administrator appointed.

Estate of Eliab Kingman; will and codicil admitted to probate and letters granted and executor bonded, sale ordered conditional.

Copy of Will of Wm. Wirt, deceased; from Baltimore, Md., exhibited, filed and recorded.

Estate of S. Pamela Mackey; petition for letters; publication ordered.

## Legal Notices.

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles A. Watts, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1883.

19-3 MARTIN F. MORRIS, 1306 F Street, n. w.

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Hervey King, late of Portsmouth, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

MARY P. KING, Administratrix.

THOS. H. CALLAN, Solicitor. 19-3

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of May, 1883.

MARY M. HUGH, Administratrix.

B. H. WEBB, Solicitor. 19-3

### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. May 8, 1883.

In the case of William A. Gordon, Administrator of John B. Blake, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 8th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 8, 1883.

In the case of George E. Hamilton, Administrator of Thomas T. O'Leary, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 1st day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 6th day of May, 1883.

CASSIMER BOHN } No. 8639. Eq. Dec. 23.

JOHN FOY ET AL.  
On motion of the plaintiff, by Mr. James McD. Carrington, his solicitor, it is ordered that the defendants, John Foy, James O. Foy, John M. Foy, Samuel O. Foy and heirs unknown of John Foy, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. F. JAMES, Justice.

True copy. 19-3 Test: R. J. MILES, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

YOUNG ET AL.

YOUNG ET AL.

Equity. No. 7,771.

Charles Walter, the trustee in this cause having reported to the court that he has sold to Horace K. Fulton, the real estate mentioned in the proceedings in this cause, viz.: lots lettered "F" and "G" in Coltman's sub-division of lots four, five, six and seven, in square numbered two hundred and forty-five, in the city of Washington and District of Columbia, at and for the sum of eight thousand and five hundred dollars cash, and that said Fulton has fully complied with the terms of sale:

It is, thereupon by the court this 9th day of May A. D. 1883, ordered, adjudged and decreed that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the eleventh day of June, 1883. Provided, a copy of this order be published once in each week for three successive weeks in the Washington Law Reporter prior to said eleventh day of June, 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 19-3 E. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rachel W. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

GEO. A. BARTLETT, Administrator.  
CHAPIN BROWN, Solicitor. 19-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Sarah Hammond, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

19-3 EDWARD H. THOMAS.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.

WILLIAM DUVAL,  
WILLIAM G. GREEN,  
Administrators.

WM. A. MELOY, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 6, 1883.**

In the matter of the Estate of S. Pamela Mackey, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Edmund W. M. Mackey, of Mount Pleasant, S. C.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: WALTER S. COX, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CATTENDEN & MACKAY, Solicitors. 19-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Isaac Delano, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of May, 1883.

JAMES S. DELANO, Administrator.  
F. P. CUPPY, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1, 1883.**

In the matter of the Will of Fisher A. Foster, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Snell. All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
B. F. LEIGHTON, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1, 1883.**

In the case of Ivory G. Kimball, Administrator of Garrett Barry, jr., deceased, the Administration aforesaid has, with the approval of the court, appointed Friday, the 25th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 4, 1883.**

In the matter of the Estate of James C. Reid, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Higgins, of Prince William Co., Va., a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
C. STOKES, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the matter of the Estate of Abby L. Bodfish, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Frederick D. Sewall.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
J. W. & GEO. L. DOUGLASS, Solicitors. 17-4

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of April, 1883.  
**IN RE THE ALLEGED LUNACY**

No. 8484. Equity Docket.

OF GEORGE BRENT.

On motion of the petitioner, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the said George Brent, the alleged lunatic, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 17-8 E. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of S. Louisa Yeabower, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.  
17-8 SAM'L MADDOX, Administrator c. t. a.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. Erhard Mack, late of the City of New York, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1883.  
JAMES H. MARR.

WM. PIERCE BELL, Solicitor. 17-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.

In the matter of the Estate of Mary F. Woods, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Elizabeth M. Woods.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: 17-3 H. J. RAMSDALL, Register of Wills.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. L. Waldrop, late of the State of North Carolina, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of April, 1883.  
17-3 GEORGE F. APPELBY.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia holding a Special Term for Orphans' Court Business. April 24, 1883.

In the case of Daniel W. Middleton, Jr., Administrator of Jacob W. Ker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of June, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17-3 H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

VIRGINIA F. PAYNE ET AL.

Eq. No. 8,336. Doc. 22.

WILLIAM T. PAYNE ET AL.

Edward H. Thomas and Glen W. Cooper, trustees, paying reported that they have sold original lot 18, in square 16, to William T. and Charles B. T. Payne, at and for the sum of \$7,100; it is, by the court this fourth day of May, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the fifth day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last named day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 18-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. April 17, 1883.

In the case of Ferdinand Theilkohl, Executor of Gottlieb Rumpf, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.  
CHAS. A. WALTER, Solicitor. 18-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Moses Ogle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1883.  
18-3 SAM'L R. BOND, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 2d day of May, 1883.

HERMAN COPPERMAN

No. 24,412. At Law.

HEIMAN KURZMAN.

On motion of the plaintiff, by Mr. Garnett, his attorney, it is ordered that the defendant, Heiman Kurzman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. MAC AETHUR, Justice.  
True copy. Test: 18-3 R. J. Meigs, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 24th day of April, 1883.

FRANCIS D. SHOEMAKER ET AL.

No. 8,631. Eq. Doc. 23.

EDWARD SHOEMAKER ET AL.

On motion of the plaintiffs, by Mr. Oragin, their solicitor, it is ordered that the defendants, Edward Lukens, Lewis A. Lukens, Mary T. Lukens, David Lukens, Ellen Lukens, Mary Lukens, Margaret A. Smedley, Albin M. Smedley and Mary E. Fowler, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 17-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keefe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1883.

Witness: GEO. E. JOHNSON. BRIDGET M. KEEFE,  
mark.

P. B. STILSON, Solicitor. Administratrix c. t. a. 18-3

# Washington Law Reporter

WASHINGTON - - - - - May 19, 1883.

GEORGE B. CORKHILL - - - EDITOR

LETTERS OF ADMINISTRATION on the estate of Thomas N. Quarles were taken out in Tennessee, by Sample Ellett, a citizen of Virginia. The administrator brought an action of assumpsit against James S. Wilkins, a citizen of Tennessee, in the Circuit Court of the United States for the Western District of the latter State. The defence set up was that Quarles, at the time of his death, was a citizen of Alabama, and that the defendant had paid the sum sued for to William Goodloe, who had been appointed his administrator in that State; that the sum had been duly accounted for in the final settlement of the Alabama administrator, and that there were no creditors of Quarles in Tennessee. There was conflicting evidence upon the question whether the domicile of Quarles, at the time of his death, was in Alabama or Tennessee; the defendant requested the court to instruct the jury that the payment to the Alabama administrator before the appointment of one in Tennessee, there being no Tennessee creditors, was a valid discharge of the defendant without reference to the domicile of the deceased; this instruction was refused by the court, and under the instructions as given the jury found the domicile to be in Tennessee and found for the plaintiff.

Upon error to the Supreme Court of the United States, the judgment was reversed and a new trial awarded.

There is no doubt, say the court, through Mr. Justice Gray, who delivered the opinion, that the succession to the personal estate of a deceased person is governed by the law of his domicile at the time of his death; that the proper place for the principal administration of his estate is that domicile; that administration may be taken out in any place in which he leaves personal property; that no suit for the recovery of a debt due to him at the time of his death can be brought by an administrator as such in any State in which he has not

taken out administration, but that the reason for this last rule is the protection of the rights of citizens of the State in which the suit is brought, and the objection does not rest upon any defect of the administrator's title to the property, but upon his personal incapacity to sue as administrator beyond the jurisdiction which appointed him,

If a debtor residing in another State, comes into the State where the administrator has been appointed, and there pays him, the payment is a valid discharge everywhere; and if, being in the State, the debtor is sued and judgment recovered against him, the administrator may sue upon the judgment in the State where the debtor resides. *Talmadge v. Chapel*, 16 Mass., 71.

As to the title of the administrator to promissory notes and other written evidences of debt coming into his possession, *Hooper v. Butler*, 2 Pet., 289; *Rand v. Hubbard*, 4 Met., 252, 258, 260; *Peterson v. Chemical Bank*, 82 N.Y., 21; *Barrett v. Barrett*, 8 Greenl., 353, and *Robinson v. Crandall*, 9 Wend., 425, are cited.

The court held when the same case was before it, after a former trial, in which it appeared that the domicile of the deceased was in Alabama, that the payment in Tennessee to the Alabama administrator was good as against the administrator afterwards appointed in Tennessee; *Walkins v. Ellet*, 9 Wall., 740.

In conclusion, it is said, however, that the fact that the domicile has now been found to be in Tennessee does not make any difference, that the distribution among the next of kin, whether made in Alabama or Tennessee, must be according to the law of the domicile, and that it has not been suggested that there is any difference between the laws of the two States in that regard. (*Wilkins v. Ellett*, administrator, No. 180, October Term, 1883.)

THE coroner's jury in the case of Amasa Stone, who committed suicide in Cleveland, on the 11th inst., has rendered a verdict that the deed was caused by mental depression, resulting from ill health, loss of sleep and business anxiety. Deceased has left property estimated at upwards of five million dollars.



# Supreme Court District of Columbia.

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

MICHAEL A. FRENCH

vs.

WILLIAM H. CAMPBELL ET AL.

EQUITY. No. 6,628.

{ Decided March 26, 1883.

{ The CHIEF-JUSTICE and Justices HAGNER and COX sitting.

A will construed and a general devise over after the creation of a life estate in the same property held to pass the fee.

## STATEMENT OF THE CASE.

The bill in this case was filed to remove a cloud upon the complainant's title and obtain a construction of the will of Mary French. At the hearing below a decree was passed divesting the defendants of all claim or title to the property in question, and investing Michael A. French with the title in fee simple. The point at issue was the construction of the following will, and whether the complainant took a life estate or a fee simple.

"I, Mary French, of the city of Washington and District of Columbia, being of sound mind and disposing memory, calling to mind the uncertainty of life and the certainty of death, and wishing to make proper arrangements with reference to the property of which I am possessed, do make, ordain and publish this as my last will and testament.

"I request that my executor, hereinafter named, shall have my body decently, though plainly, interred, and that a plain, marble headstone be placed at the head of my grave, with a suitable inscription thereon, to mark the place where my mortal remains repose.

"I request that my funeral expense and just debts be paid so soon after my decease as possible.

"I give and bequeath into Michael A. French, the house and lot on 8th street, being part of lot No. 4, in square No. 425, the same I purchased from Aza Gladman.

"I give and bequeath unto my husband, Thomas French, during his natural life, the houses and lot numbered 7, in square 403, being the same that was conveyed by Clement Cox and wife to Lewis Edwards, as trustee for Mary French, by deed bearing date the 7th day of May, 1838, the said property aforesaid lying and being in the city of Washington.

"This bequest to my husband, Thomas French, is with this limitation and restriction; that is, if the said Thomas French shall again intermarry, then his interest in said

property is to cease, and the benefits and interest thereof are to go to Michael A. French.

"Upon the decease of the said Thomas French, or if he shall marry again, I give and bequeath the said lot No. 7 in square 403 to the said Michael A. French.

"I hereby appoint my friend, French S. Evans, executor of this, my last will and testament."

## BRADLEY & DUVAL for complainants:

It is a fundamental maxim upon which the construction of every will must depend that the intention of the testator, as disclosed by the will, shall be fully carried into effect if it be not in contradiction of some established rule of law. This intention must be drawn from the whole context of the will. And it is not necessary to look alone at the words of the gift itself to ascertain the intention as to the *quantum* of the estate devised, if it can be gathered from expressions used in any part of it, what he supposed or intended to be the nature and extent of it. That words of inheritance are necessary to convey a fee is certainly a good, general rule of the common law; but, in the case of wills, it is entirely subordinate to expressions of the testator's intention. The statute respecting wills allows men to dispose of their lands not by any technical terms, but at their will and pleasure. *Abbot v. Essex Co.*, 18 How., 202, 215; *Smith v. Bell*, 6 Pet., 68, 75; *Lambert's Lessee v. Paine*, 3 Cr., 47.

The intention is to be gathered from the "whole context," the "four corners," of the will. The introductory clause, or preamble, as it is sometimes called, has always been considered in manifesting the intention, it has been designated the key of that intention; and from the earliest reported cases, where the introductory clause expresses an intention to dispose of the whole of testator's estate, the courts have brought this clause down and coupled it with the devise, where the words of the devise admit of passing a greater estate than for life, to assist in ascertaining the intention. *Kennon v. McRoberts*, 1 Wash., 96, 100; *Wright v. Dunn*, 10 Wheat., 204; *Burwell v. Mandeville's Excr.*, 2 How., 560, 577; *Finley v. King*, 3 Pet., 346, 378; *McConn v. Lay*, 5 Cr. C. C., 548; *Schrivver v. Meyer*, 19 Pa. St., 87; *Fogg v. Clark*, 1 N. H., 163; *Doe v. Haiter*, 7 Blackf'd, 488.

The language used by the testatrix in the case at bar in the introductory clause of her will is: "Wishing to make proper arrangements with reference to the *property* of which I am possessed;" and in the devise itself, after limiting a life estate to her husband, Thomas: "If the said Thomas French shall

again intermarry, then his interest in said property is to cease, and the *benefits and interest thereof* are to go to Michael A. French. Upon the decease of said Thomas, or if he shall marry again, I give and bequeath the said lot No. 7, in square 408, to the said Michael A. French." It will be observed that the testatrix knew how to give a life estate if she intended only that estate to pass to complainant.

The words "property" and "interest," like the word "estate," will pass a fee. 2 Jarmin (4th edition), 133, note, 140, 141; Pitman v. Stevens, 15 East., 505; Pearson v. Housel, 17 Johns, 281; Burwell v. Mandeville's Exec'r, 2 How., at 577, 578; Andrew v. Southouse, 5 Term R., 292.

Again, it is very common to construe what seems a life estate in terms, to create a fee in remainder, because of a prior life estate having been expressly created in another in regard to the same property. Chief Justice Shaw denominates this a rule of construction, and says the presumption is that such devise was, in the mind of the testator, a final disposition of that part of his estate, and to effect that purpose it must be a fee. Motzer v. Cassin, 2310 Equity, S. C., D. C.; Plimpton v. Plimpton, 12 Cush., 458, 463; 1 Redf. Wills, 466; Butler v. Little, 3 Greenf., 239; Cook v. Holmes, 11 Mass., 528; Butler v. Butler, Wash. Law Reporter, Dec. 8, 1882, Vol. X, No. 49; 2 Jarmin Wills, 4th edition, (189); 2 Washburne, Real Prop., 752.

We submit, then, that the court below properly construed this devise to carry the fee to complainant; that such was the intention of the testatrix, and that such intention cannot only be extracted from her words with reasonable certainty in view of the whole will, but that no other reasonable intention can be imputed to her.

WM. F. MATTINGLY and J. J. JOHNSON for defendants:

The introductory words of this will are relied upon to enlarge the estate of the devisee from a life estate to a fee.

In the first place, it is to be noted that the introductory words in this will do not manifest any intention on the part of the testatrix to dispose of her entire estate; and the language of the will itself shows that she did not dispose of her personal estate. It is to be presumed from the face of the will that she had personal estate, for she directs her executor to have her buried, and to place a marble headstone at the head of her grave, and directs that her funeral expenses and just debts be paid as soon as possible.

The introductory words are: "And wishing

to make proper arrangements with reference to the property of which I am possessed."

The devisee, Michael A. French, was her step-son, being the son of her husband by a previous wife.

Is any one to say that testatrix did not consider it proper arrangement to give her husband an estate for life in this lot, or so long as he remained unmarried, and upon his death or marriage that his son should have it during his life?

The law favors the heir-at-law, and he is to be disinherited only by an express devise with words of limitation, or by necessary implication. The conceded rule of interpretation is that a general devise, without words of limitation, passes but a life estate, notwithstanding a previous devise of a life estate in the same property.

The rule as to the office of introductory words in a will is as stated by Chancellor Kent, [4 Kent, 541, n. 1.]. He says:

"Introductory words to a will cannot vary the construction so as to enlarge the estate to a fee, unless there be words in the devise itself sufficient to carry the interest; such introductory words are like a preamble to a statute, to be used only as a key to disclose the testator's meaning."

See also 10 Wh., 204, Wright v. Denn; 9 John., 222, Jackson v. Wells; 10 John., 148, Jackson v. Bull; 6 H. & J., 205, Beall, v. Holmes. [The court in this case refers to all preceding leading cases, and lays down the rule in Maryland. It is cited and approved by Kent.] 2 Jar. on Wills, 125 [171], 138. [187, 188.]

Mr. Chief Justice CARRTER delivered the opinion of the court:

In this case the court have come to the conclusion to affirm the decree below. The case involves the construction of a will and the question is whether the complainant takes a fee-simple or a life estate only. The question is not novel in this court. The issue has been once made and determined on an essentially parallel case, in which we came to the conclusion that the language used here conveyed an estate of inheritance. It is contended however that our decision is in conflict with early and repeated decisions both in Great Britain and this country, which have always held that a general devise over, without words of inheritance, after the creation of a prior life estate in the property devised, will pass but a life estate. But, while this may be so, we are constrained to believe that our judgment is in thorough consonance with good sense and with that principle which pronounces the intention of the testator the supreme and overruling con-

sideration governing the construction of wills. The construction put upon this class of devises in the cases alluded to appears to be in contravention of the rule of construction adopted by the courts in ascertaining the will of the testator, and marvellously enough the courts confess it. We might just as well say, following that line of decisions, "although we believe the testatrix designed in this instance to devise an estate of inheritance, we nevertheless decide that the devisee shall not have it because the technical terms of the conveyance do not import it: and although a will, unlike all other conveyances, is not dependent upon technical terms, but such terms are overruled by the intention of the testator, nevertheless we determine that these technical terms shall rule to the suppression of the purpose of the testatrix." That is what we would be saying if we followed these decisions. Of course it is important that established rules of construction should be preserved, even though it be at the cost of sometimes sacrificing the intention of a testator. But it has always been held that where a rule of judicial interpretation obviously fails to answer the purpose for which it was created and plainly operates in contravention of the intention of the testator, then the rule loses its application. What was the intention of the testatrix here? Did she intend to pass a life estate or an estate of inheritance? Here is the language:

"I give and bequeath unto my husband Thomas French, during his natural life, the houses and lot numbered 7, in square 403, being the same that was conveyed by Clement Cox and wife to Lewis Edwards, as trustee for Mary French, by deed bearing date the 7th day of May, 1888, the said property aforesaid lying and being in the city of Washington."

"This bequest to my husband is with this limitation and restriction; that is if the said Thomas French shall again intermarry, then his interest in said property is to cease and the benefits and interests thereof are to go to Michael A. French"

She put two unmistakable qualifications to the title of Thomas French, one was marriage and the other death. There can be no mistake about the estate created in his case. It was less than an estate of inheritance, and it left the remainder of the property to pass on to somebody and in some way. Then she proceeds to say that upon the decease of the said Thomas French, or if he shall marry again, she gives and bequeaths the said lot No. 7 in square 403 to Michael A. French. Now, in an ordinary reading of the English language as estimated by those who speak and write it, the conclusion would be sponta-

neous that this testatrix intended to give a life estate to Thomas French and an estate of inheritance to Michael A. French. That is the way it would be understood by all laymen. Nobody would hesitate about it a single moment. And still it is claimed that, read in the light of the law, this language means another life estate. Where was it to go then when that had expired? She had no children. In the ascending line it was to go to collateral-als or to their descendants. Now, did she contemplate such a disposition of her property as that? In our opinion she never intended any such thing. That would be simply leaving the disposition of her estate to the result of accident, and would be a mark of the want of intention. Whereas the very making of a last will and testament is an evidence of the testator having an intention. We think that this language means that after the determination of Thomas French's life estate in this property Michael French is to take whatever remains of the estate the testatrix possessed. That is what this court held in a case similar to this, and it has been so held in a like case in Massachusetts in a very learned and able decision reported in 12 Cushing. (*Plimpton v. Plimpton*, 458.) That decision alone, if there were no others, ought in my opinion to be sufficient to consecrate so self-evident a rule of reason, especially as against a line of authorities which do not profess that they are following reason, but simply precedent.

Mr. Justice Cox, while concurring in the conclusion of the court, said:

I concur in the conclusion announced by the chief-justice, with some hesitation, and on somewhat different grounds from those that have been expressed. A very interesting question in the case was whether a previous gift of a life estate in a will would justify or require the court to interpret a subsequent devise over of the same estate, expressed in general terms, and without words of limitation, to mean a fee simple. Now it seems to me that that would be a most reasonable rule of interpretation. I can hardly conceive that a man or a woman would devise a life estate, and then give the property over generally, intending to give only a subsequent life estate; and yet I must confess the weight of authority is in favor of the defendant upon this point. In fact there is only one decision, excepting that of this court, on the other side, viz., the decision of Judge Shaw reported in Cushing. That is a decision of very high authority. It was made a long time ago, and Judge Shaw states it there as if it were a settled rule of interpretation. He says that when there is a

previous life estate and then a general devise afterwards, the latter is to be interpreted as a devise of the fee simple, and I was prepared to find that rule established by an abundance of authority; but I should say that the weight of authority is the other way, because there are numerous cases cited both from the English and the American reports strongly in point upon that question, and holding the opposite of Judge Shaw's rule. But I believe that in almost every instance, and probably in this case, a general devise by a testator, especially by an illiterate or unlearned testator, is intended to pass the fee simple; and I fall in with the inclination of the courts to lay stress upon any other feature in the will which assists in interpreting the general devise in that direction. In this way I think there is language in this will which materially aids the court in coming to the conclusion which has been announced. After giving the life estate to her husband, the testatrix says that the bequest is with the limitation and restriction that if he shall marry again then his interest in said property is to cease, and the benefits and interests thereof are to go to Michael A. French. Now, on the part of the defense, it has been contended that this language merely contemplated the continuance of Thomas French's life estate in Michael A. French; that the terms "benefits and interest thereof," referred to the life estate of Thomas French and that that was what she intended to give to Michael A. French in the contingency contemplated. But that cannot be, for this reason: the clause expressly provides that upon the marriage of Thomas French his interest in the property is to cease, and, therefore, that estate cannot be intended to go over to Michael French. And even an illiterate testator would hardly be guilty of the philological enormity of saying that the interest of Thomas is to cease, and yet that the "benefits and interests thereof" are to go over to Michael. It seems very clear that the terms "benefits and interests" apply to the property; that the interest of Thomas in the property is to cease, and then the "benefits and interests" of the property are to go to Michael A. French. What is the meaning of this word "interest?" It has received interpretation over and over again. It means the title; and if the testator had said, "I devise my interest in the title of said property, after the death of Thomas French, to Michael A. French," it would hardly be stronger than it is here, as the expression of a wish that the whole title of this property should in a certain contingency go to Michael A. French. I think, therefore, that the provision in this

clause is, that upon the marriage of Thomas French the whole fee simple interest and title in this property shall go over to Michael. This provision in the will contemplates not merely the contingency of marriage, but also that of death, and it can hardly be contended that the testatrix meant to give a less estate in the case of marriage than in the case of death. The provision is only intended to emphasize and repeat the previous clause and to extend it to the contingency of death equally with that of marriage. Having already provided for the case of marriage, she then goes on and says that whether he marries again, or dies, it is her desire that the property shall go over to Michael A. French on the same terms and in the same state, in case of death, as previously provided for in case of marriage. Clearly it was not intended to give a less estate in this last case, but the intention was that the property should pass over in the same state exactly as in the case of marriage, and there is no distinction made between those two contingencies. I look upon the last clause as obviously a mere repetition of the previous one, and the extension of its provision to the other contingency. So the fair interpretation of this paper is, that either in the case of the marriage, or of the death of Thomas French, the whole estate shall go over to Michael A. French. It is principally upon this ground that I concur in the conclusion that the intention was to give Michael a fee simple in case of the death or marriage of Thomas French.

NOTE.—The case referred to in the opinion as having been decided in this court is that of *Motzer v. Cassin*, 2310 Equity. It was decided November 2, 1871, but no report of the case has ever been published, nor does it appear that any written opinion was ever filed. An examination of the record and papers, however, shows the following:

The plaintiff, Fanny L. Motzer, filed her bill against William D. Cassin March 13, 1871, praying a partition of a house and lot in Georgetown, D. C. She claimed an interest in fee under the will of Ann T. Washington, and the only question before the court was whether a life estate or a fee passed by the will, the material parts of which were as follows:

"I, Ann T. Washington, of Montgomery County, in the State of Maryland, being of sound and disposing mind, memory and understanding, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my world (*sic*) affairs and thereby be the better prepared to leave this world, &c., \* \* \* devise and bequeath as follows:

"I give and bequeath unto my son, Lewis W. Washington, of Jefferson County, Virginia, during the minority of his children, James, Mary Ann, and Eliza R. B. Washington, the farm whereon I

now reside, called 'Greenhill,' together with furniture in the house and kitchen, stock, farming implements, and all other personal effects being thereon, and after the said children shall have attained, the said James to the age of twenty-one, and the said Mary Ann and Eliza R. B. to the age of eighteen years, I give and bequeath unto them, share and share alike, the farm, household furniture, stock and other personal effects hereinbefore named, their heirs and assigns forever.

"I give and bequeath to my niece, Fannie Moutzer, wife of the Rev. Danl. Moutzer, her heirs and assigns forever, a certain lot or portion of ground lying in the city of Washington, and on the street leading from the avenue to National Observatory."

[The following is the clause under which plaintiff claimed:]

"I give and bequeath unto my sister, Mary Peter, during her lifetime, my house and lot, and the furniture in said house lying and being on the corner of Dunbarton and Congress streets, in Georgetown, and after the death of my said sister, I bequeath the furniture in the said house to my said niece, Fannie Moutzer, and the house and lot before named, share and share alike, to my said son, Lewis W. Washington, Fannie Moutzer, James, John and William Cassin.

(I further devise and bequeath to my said sister, Mary Peter, during her life, my negro woman, Christine, and after her death, I will and desire the said Christine to be free from all manner of service or servitude to me, my heirs and assigns, forever.

(I also give and bequeath unto the hereinbefore named James Washington, Christine's youngest child, aged two years, to him, his heirs and assigns, forever."

The court in special term passed a decree dismissing the bill on the ground that the plaintiff was entitled only to a life estate in the property. From this decree an appeal was taken to the General Term, where the following decree was passed:

"This cause came on to be heard on appeal from the Equity Court upon the bill, answer and exhibits, and was argued by counsel; on consideration whereof, the court is of opinion that Fanny L. Motzer, Lewis W. Washington, James, John and William D. Cassin take a fee-simple under the will of Mrs. Ann T. Washington, deceased, in the property mentioned in the devise. It is thereupon ordered, adjudged and decreed, that the decree of the Equity Court dismissing the complainant's bill upon the ground that she was entitled to only a life interest in the said property be, and the same is hereby reversed and set aside."

**Eminent Domain; Excursion Railroads.**—An excursion railroad requires more accommodation at its terminus than a mere ordinary station house; places of rest and shelter are not inappropriate and the creation on the land of decorations and conveniences for passengers is not an abandonment by the road of the uses for which it acquired the premises. —[The Prospect Park & Coney Island R. R. Co. v. Williamson et al, Court of Appeals New York, March 13, 1883.]

## United States' Supreme Court.

Nos. 209 and 482.—OCTOBER TERM, 1882.

SAMUEL T. WILLIAMS, Appellant,

vs.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON  
and George J. Seufferle.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON  
and George J. Seufferle, Appellants,

vs.

JEANNIE K. STICKNEY, Administratrix of  
William Stickney, deceased.

*Appeal from the Supreme Court of the District of Columbia.*

1. By a trust deed, duly recorded, land was conveyed to the trustees in fee, and they were authorized to release it to the grantor upon payment of the negotiable promissory note thereby secured. Before that note was paid or payable, and after it had been negotiated to an indorsee in good faith for full value, a deed of release, reciting that it had been paid, was made to the grantor by the trustees and by the payee of the note, and recorded; and the grantor executed and recorded a like trust deed to secure the payment of a new note for money lent to him by another person, who had no actual notice that the first note had been negotiated and was unpaid, and who required and was furnished with a conveyancer's abstract of title, showing that the three deeds were recorded and the land was free from incumbrance, before he would make the loan. *Held*, that the legal title was in the trustee, under the second trust deed, and that the note thereby secured was entitled to priority of payment out of the land.
2. Upon a bill in equity by the holder of a debt secured by deed of trust, to set aside a release negligently executed by the trustee to the grantor, the plaintiff cannot have a decree for the payment of his debt by the trustee personally.

Mr. Justice GRAY delivered the opinion of the court.

This is a bill in equity, filed Benjamin L. Jackson and others, partners under the name of Jackson, Brother & Company, and heard on the pleadings and proofs, by which the material facts appear to be as follows:

On the 1st of January, 1875, Edwin J. Sweet and his wife purchased and took a deed from Augustus Davis of a house and land in Washington, and executed and acknowledged a trust deed thereof, in which they recited that they were indebted to Augustus Davis in the sum of \$8,000 for deferred payments of the purchase money, for which they had given him their four promissory notes of the same date and payable to his order, three for the sum of \$1,833.33 each, and payable

in one, two and three years respectively, and one for the sum of \$2,500, payable in three years, and all bearing interest at eight per cent.; and by which deed, in order to secure the payment of those notes as they matured, they conveyed the land to Charles T. Davis and William Stickney and the survivor of them, their and his heirs and assigns, in trust to permit the grantors to occupy the premises until default in payment of principal or interest of the notes; and upon the full payment of all the notes and interest, and all proper costs, charges and commissions, to release and convey the premises to Mrs. Sweet, her heirs and assigns; with a power of sale upon default of payment, and a provision that the purchaser at the sale should not be bound to see to the application of the purchase money. That deed of trust was recorded on the 14th of January, 1875.

The notes secured by that deed were endorsed by Augustus Davis and Charles T. Davis, had on the margin the printed words, "Secured by deed of trust," and were soon after their date transferred by the endorsers for full value and before maturity to the plaintiffs, and have since been held by them, except the one due at the end of the first year, which was paid by the endorsers. Charles T. Davis was a son and a partner of Augustus Davis, and was a broker and real estate agent.

On the 15th of September, 1876, before any of the other notes fell due, and without the plaintiffs' knowledge, the trustees, Davis and Stickney, executed a deed of release of the land to Mrs. Sweet, reciting that the debt secured by the trust deed had been fully paid and discharged, as appeared by the signature of Augustus Davis, who joined in the execution of the release.

At or before the same time Sweet and wife, employed Charles T. Davis to make some arrangement by which they could take up those notes and give others running for a longer time; he went to Samuel T. Williams, and offered him the land unincumbered, as security for a loan of \$5,000, payable in four years, and bearing nine per cent. interest; and Williams agreed to make the loan if satisfied by a conveyancer's abstract of title that the land was free of all incumbrance, but not otherwise.

On the 27th of September, 1876, a deed of trust, containing provisions like those in the first deed of trust, was executed by Sweet and wife to Robert K. Elliott and Charles T. Davis, to secure the payment of a note for \$5,000 in four years to Williams, with interest at the rate of nine per cent. On the 28th of September, the deed of release and the second

deed of trust were recorded; Charles T. Davis furnished Williams with certificates of a conveyancer that he had examined the title on the 14th of September and found it good, subject to the first trust deed, and again on the 28th, when the only changes were the release and the second deed of trust; and Williams thereupon gave to Davis his check, payable to Davis's order, for \$5,000, (which Davis applied to his own use), and received from him the note of Sweet and wife for the same amount and the trust deed to secure its payment. Neither Williams nor Sweet and wife then knew that, at the time of the execution of the release, Augustus Davis was not the holder of the notes secured by the first trust deed. On the 29th of September, Sweet and wife executed another trust deed to Charles T. Davis to secure the payment of six promissory notes to Augustus Davis for \$550.26 each, payable at intervals of six months from their date.

On the 27th of July, 1877, the interest due on the note to Williams not having been paid, the trustees, Elliott and Davis, sold the land by auction for the sum of \$6,325 to Eli S. Blackwood, who paid them \$1,325 in cash (which was applied to the payment of the interest and of other charges) and gave them his note for \$5,000, secured by a trust deed of the land.

The bill, which was against Williams, Sweet and wife, Augustus Davis and Blackwood in their own right, against Charles T. Davis and Stickney in their own right and as trustees, and against Elliott as trustee only, prayed that the release by Stickney and Charles T. Davis, as well as all the subsequent conveyances, might be declared void as against the first trust deed, and the trust created by that deed be declared to have priority over all subsequent incumbrances; that Charles T. Davis be removed from his trust and a new trustee be appointed in his stead; that the land be sold and the proceeds applied, under order of the court, to the payment of the notes held by the plaintiffs and of any other lawful claims; and for an injunction, a discovery, an account and further relief.

The judge before whom the case was first heard made a decree declining to set aside the release or to declare that the first deed of trust had priority over the second; adjudging that the first deed of trust was fraudulently and negligently released by Augustus Davis and Charles T. Davis, and wrongfully and negligently released by Stickney, and therefore ordering that the plaintiffs recover against Augustus Davis, Charles T. Davis, Stickney, and Sweet and wife, the amount due on the

notes held by them, with interest; declaring that the note for \$5,000 held by Williams was the first charge on the land; and ordering the land to be sold, and the proceeds to be distributed in paying off the incumbrances in the order thus established.

The court in general term reversed those parts of the decree which declined to set aside the release, and which declared that Williams was entitled to priority; and also that part which adjudged that the plaintiffs recover against Stickney the amount of their debt; affirmed it in other respects; and ordered the proceeds to be first applied to the payment of the plaintiffs' debt. Williams appealed from so much of this decree as gave priority to the plaintiffs' claim; and the plaintiffs appealed from so much as reversed the decree against Stickney.

By the statutes regulating the conveyance of real estate in the District of Columbia, all deeds of trust and mortgages, duly acknowledged, take effect and are valid, as to all subsequent purchasers for valuable consideration without notice, and as to all creditors, from the time of their delivery to the recorder for record; whereas other deeds, covenants and agreements, take effect and are valid, as to all persons, from the time of their acknowledgment, if delivered for record within six months after their execution. Any title-bond or other written contract in relation to land may be acknowledged and recorded in the same manner as deeds of conveyance; and the acknowledgment, duly certified, and the delivery for record, of such bond or contract, shall be taken and held to be notice of its existence to all subsequent purchasers. Rev. Stat. D. C., §§ 446, 447, 449.

The first deed of trust from Sweet and wife did not give the trustees merely a power, to release the land on payment of the notes secured thereby, and to sell on default of payment; but it vested the legal title in them. A release of the land before payment of the notes would be a breach of their trust, and would be unavailing in equity to any one who had knowledge of that breach. *Insurance Co. v. Eldredge*, 102 U. S., 345. But it would pass the legal title. *Taylor v. King*, 6 Munf., 358; *Don v. Troutman*, 7 Ired., 155. The legal title in the land, being in the trustees under the first deed of trust, passed by their deed of release to Mrs. Sweet, and from her by the second deed of trust to the trustees for Williams.

The first deed of trust having been made to the trustees therein named for the benefit of Augustus Davis, and to secure the payment of the notes from the grantors to him; and

the plaintiffs, upon the transfer and indorsement to them of those notes, having taking no precaution to obtain and put on record an assignment of his rights in such form as would be notice to all the world; the recorded deed of release, executed by him as well as by the trustees, reciting that the notes had been paid, and conveying the legal title, bound the plaintiffs, as well as himself, in favor of any one acting upon the faith of the record and ignorant of the real state of facts.

If the plaintiffs wished to affect subsequent purchasers with notice of their rights, they should have obtained a new conveyance or agreement, duly acknowledged and recorded, in the form either of a deed from the original grantors, or of a declaration of trust from the trustees, or of an assignment from Augustus Davis of his equitable interest in the land as security for the payment of the notes. The record not showing that any person other than Augustus Davis had any interest in the notes, or in the land as security for their payment, an innocent subsequent purchaser or incumbrancer had the right to assume that the trustees, in executing the release had acted in accordance with their duty.

Williams is admitted to have had no actual knowledge that the notes secured by the first trust deed were held by the plaintiffs, or that they were unpaid. The knowledge of these facts by Chas. T. Davis, through whom Williams made the loan does not bind him, because upon the evidence Charles T. Davis appears not to have been his agent, but the agent of Sweet and wife.

Williams took every reasonable precaution that could have been expected of a prudent man, before advancing his money to Charles T. Davis for Sweet and wife. He declined to lend his money, until after he had been furnished with a conveyancer's abstract of title, showing that the deed of release from the trustees under the first deed of trust and from the original holder of the notes secured thereby, as well as the second deed of trust to secure the repayment of the money lent by Williams, had been recorded, and that the land was not subject to any incumbrance prior to the second deed of trust.

It was suggested in argument that as the first deed of trust showed that the notes secured thereby were negotiable and were not yet payable, and that the land was not intended to be released from this trust until all the notes were paid, Williams was negligent in not making further inquiry into the fact whether they were still unpaid. But of whom should he have made inquiry? The trustees under the first deed and the original

holder of the notes secured thereby having expressly asserted under their own hands and seals that the notes had been paid, and Sweet and wife having apparently concurred in the assertion by accepting the deed of release and putting it on record, he certainly was not bound to inquire of any of them as to the truth of that fact; and there was no other person to whom he could apply for information, for he did not know that the notes had ever been negotiated, and he had no reason to suppose that they had not been cancelled and destroyed.

To charge Williams with constructive notice of the fact that the notes had not been paid, in the absent of any proof of knowledge, fraud, or gross or wilful negligence, on his part, would be inconsistent with the purpose of the registry laws, with the settled principles of equity, and with the convenient transaction of business. *Hine v. Dodd*, 2 Atk., 275; *Jones v. Smith*, 1 Hare, 43, and 1 Phillips, 244; *Agra Bank v. Barry*, Irish R. 6 Eq., 128, and L. R., H. L., 7, 135; *Wilson v. Wall*, 6 Wall. 83; *Norman v. Towne*, 130 Mass., 52.

The equity of Williams being at least equal with that of the plaintiffs, the legal title held for Williams must prevail, and he is entitled to priority. The decree appealed from is in this respect erroneous and must be reversed.

But that decree, so far as it refuses relief against Stickney personally, is right. The main purpose of the bill is to set aside the deed of release and to satisfy the plaintiffs' debt out of the land. The attempt to charge Stickney with the amount of that debt, by reason of his negligence in executing the release is wholly inconsistent with this. The one treats the release as void; the other assumes that it is valid. In the one view, Stickney is made a party in his capacity of trustee only; in the other it is sought to charge him personally. The joinder of claims so distinct in character and in relief is unprecedented and inconvenient. *Shields v. Barrow*, 17 How., 130, 144; *Walker v. Powers*, 104 U. S., 245.

The result is that the decree appealed from must be reversed, and the case remanded with directions to enter a decree in conformity with this opinion, and without prejudice to an action at law or suit in equity against Stickney.

Decree reversed.

Mr. Justice HARLAN did not sit in this case, and took no part in the decision.

NO. 212.—OCTOBER TERM, 1882.

JOHN H. STARIN, Appellant,  
v.

The Schooner JESSE WILLIAMSON, JR., her Tackle, &c., WILLIAM H. SISE et al., Claimants.

*Appeal from the Circuit Court of the United States for the Southern District of New York.*

The libellant in a suit *in rem*, in admiralty, against a vessel, for damages growing out of a collision, claimed, in his libel, to recover \$27,000 damages. After the attachment of the vessel in the district court, a stipulation in the sum of \$2,100, as her appraised value, was given. The libel having been dismissed by the circuit court, on appeal, the libellant appealed to this court: *Held*, that the matter in dispute did not exceed the sum or value of \$5,000, exclusive of costs, as required by § 3 of the act of February 16th, 1875, (18 U. S. Stat. at Large, 316,) and that this court had no jurisdiction of the appeal.

A decree against the vessel for \$27,000 would not establish the liability of the claimant to respond for that amount *in personam*, unless he was the owner of the vessel at the time of the collision, and that fact must appear by the record, in order to be so far a foundation for such liability, as to authorize this court to consider the \$27,000 as the value of the matter in dispute on said appeal.

Mr. Justice BLATCHFORD delivered the opinion of the court.

This is a suit *in rem*, in admiralty, to recover damages for a collision, brought in the district court, where the libel was dismissed. The decree was affirmed by the circuit court, on appeal, and the libellant has appealed to this court. The amount of damages claimed in the libel is \$27,000. The collision occurred on the 2d of November, 1875. The libel was filed on the 5th day of the same month, and the vessel was attached, under process, on the same day. On the 9th, Richard H. Seward, describing himself as master of the schooner sued, filed a claim to her, in which he stated that he intervened, as agent of the owners of the schooner, "for the interest of Daniel Marcy, William H. Sise, and others, owners of said schooner," in her, and made claim to her, and averred that he was in possession of her when she was attached, and that "the persons above named and others are the true and *bona fide* owners" of her, and that no other person "is" her owner. The master signed the claim as "agent," and made oath to it "that the owners of said schooner reside in Portsmouth, N. H., and Kittery, Maine, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said schooner, &c." On the



12th of November, the value of the schooner was fixed by appraisement at the sum of \$2,100, and a stipulation for value in that amount was entered into pursuant to the rules and practice of the district court, signed "W. H. Sise & Co., by R. H. Seaward," and also signed by two sureties, not claimants. A stipulation for costs, entered into on behalf of the claimants, on November 9th, pursuant to the rules and practice of the district court, recites that a claim had been filed in the cause "by Daniel Marcy, William H. Sise, and others, owners of said vessel, &c." The answer, which was sworn to December 18th, 1875, purports to be the answer of seventeen persons, (two of whom are Daniel Marcy and William H. Sise,) whom it states to be "claimants of the schooner" and "respondents," and the answer speaks of the vessel as the "respondents' schooner." The oath to the answer is made by a person who swears that he is "agent for the schooner," "and transacts business for her owners," and "that the owners are not, nor is either of them, or the master thereof, within this district."

The appellees move to dismiss the appeal for want of jurisdiction in this court to entertain it, on the ground that the matter in dispute does not exceed the sum or value of \$5,000, exclusive of costs, as required by § 3 of the act of February 16, 1875. (Chap. 77, 18 U. S. Stat. at Large, 316.) We have held, at this term, on a full review of the subject, in *Hilton v. Dickinson*, that while we have jurisdiction of a writ of error or appeal by a plaintiff below when he sues for as much as or more than our jurisdiction requires and recovers nothing, the actual matter in dispute in this court, as shown by the record, and not alone the damages alleged or prayed for in the declaration, must be looked to in determining the question of jurisdiction. We have also held, in *Elgin v. Marshall*, 106 U. S., 578, that the required valuation is limited to the matter in dispute in the particular suit in which the jurisdiction is invoked; that any estimate of value as to any matter not actually the subject of that suit must be excluded; and that there cannot be added to the value of the matter determined in that suit any estimate in money, by reason of the probative force of the judgment itself in some subsequent proceeding. As is remarked in the latter case: "The value of the judgment, as an estoppel, depends upon whether it could be used in evidence in a subsequent action between the same parties."

In the present case, although the libellant may recover \$27,000 against the vessel, because he demands that amount against her, it

is plain that he cannot recover, on the stipulation for value, which represents her, more than \$2,100, and cannot recover against the sureties in the stipulation more than that amount. Therefore, this being a suit *in rem* only, the value of the vessel represented by the stipulation, is all that is in dispute, because that is all that the libellant can obtain or the stipulators can lose, in this suit.

The libellant contends, however, that a decree for him for \$27,000 against the vessel would establish the liability of the claimants for that amount. But it could not be contended that this would be so in any case but one where the claimants were alleged and shown to have been the owners of the vessel sued at the time of the collision. In the case of *The Enterprize*, 2 Curtis, 317, the record showed that the claimant of the vessel was an owner of her during the voyage for which the wages sued for were claimed, and that by his answer he contested in that character the right to wages. For these reasons it was held that the decree in the suit *in rem* bound him personally, as *res adjudicata*; that a libel *in personam* against him would lie to execute that decree; and that the matter in dispute in that case was not the vessel or the existence of a lien on her. The proceeds of the sale of the vessel were \$13.90, the decree was for more than \$50, and \$50 was the amount necessary for jurisdiction on an appeal. Under these circumstances an appeal was allowed.

There is no allegation in the libel in this case as to who were the owners of the vessel at the time of the collision, and nothing is set forth therein as a foundation for any ultimate recovery against any particular persons, as such owners, of so much of the \$27,000 claimed as may exceed the appraised value of the vessel. Rule 15, in admiralty, provides that "in all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*." This rule, as is well settled, excludes the joining in one suit of the vessel and her owners; but it does not prevent the introduction into the libel of allegations as to the ownership of the vessel at the time of the collision, with a view to a proceeding to obtain such ultimate relief *in personam*, on the basis of a recovery *in rem*, as the libellant may be entitled to. Nor is there in the record in this case anything which can be held to establish, as against the claimants of the vessel, though they were her owners when the claim was filed, that they were her owners at the time of the collision, and so in a position to be liable to respond *in personam* for the damages suffered by the

libellant, in a proper proceeding *in personam*.

If the libellant had recovered more than \$5,000 in this case in the circuit court against the vessel, the claimants could not have appealed to this court, because, for the reasons above set forth, the amount in dispute would have been only \$2,100, on the record as it stands. As we held in *Hilton v. Dickinson* (*ubi supra*), the statute does not give to the plaintiff an advantage over the defendant, under the same circumstances.

The appeal is dismissed for want of jurisdiction.

THE Commissioner of Internal Revenue has decided to return after the 1st of July, checks and drafts imprinted with the two cent revenue stamps when desired with the word "redeemed" stamped upon each check. This will enable banks and bankers to use the stamped checks after their redemption.

A MAN who knows the world will not only make the most of everything he does know, but of many things he does not know, and will gain more credit by his adroit mode of hiding his ignorance than the pedant by his awkward attempt to exhibit his erudition.—*Colton*.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

APRIL 23, 1883.

John D. Bolden, of New York, was admitted to practice.

U. S., ex rel. Eminel P. Halstead, administrator, &c., v. A. U. Wyman, Treasurer of U. S. Rule to show cause why writ of mandamus shall not issue.

Samuel Farquhar v. John O. Jones. Motion for a rule upon the appellant under rule 91.

In re Parker Wineman. Appeal from Commissioner of Patents. Motion to file additional reason of appeal.

Theodore W. Noyes was admitted to practice. Fendall E. Alexander v. The District of Columbia. Referred by agreement to arbitration.

Fisk, Clark & Flagg v. Hollander Bros. Hearing of motions set for April 27, 1883.

APRIL 24, 1883.

James Simpson et al. v. Alice Simpson et al. Argued and submitted.

Edward Kolb v. The Inland & Seaboard Coasting Co. Plaintiff remits a portion of judgment of Special Term, &c.

Jacob Rich v. Charles E. Henry. Appeal dismissed.

APRIL 25, 1883.

James W. White et al. v. James H. Hilton. Argued and submitted.

APRIL 26, 1883.

S. E. Middleton v. Wm. McMurtrie. Argued and submitted.

The U. S. v. Henry W. Howgate. Same.

APRIL 27, 1883.

Samuel A. Peugh v. Henry S. Davis. Terms of sale modified.

Emil Justh v. Ben. Holladay. Argued and submitted.

Fisk, Clark & Flagg v. Hollander Bros. Argued and submitted.

APRIL 30, 1883.

Samuel Strong v. The District of Columbia. Motion to dismiss withdrawn and case returned to the Special Term.

Fisk, Clark & Flagg v. Hollander Bros. Motion to amend decree denied, and order suspending the issuing of injunction annulled.

MAY 1, 1883.

Jonathan Magarity v. John J. Shipman et al. Argued and submitted.

Fisk, Clark & Flagg v. Hollander Bros. Leave granted to withdraw exhibits to be used in U. S. C. C., S. D. of N. Y.

MAY 2, 1883.

U. S. v. Henry W. Howgate. Argued and submitted.

MAY 3, 1883.

James Grear was admitted to practice.

MAY 4, 1883.

Wm. W. McCullough v. Diller B. Groff. Argued and submitted.

R. D. Nailor v. Catharine Conly. Appeal of defendant to S. C. U. S. perfected by the approval of her bond.

MAY 7, 1883.

James Simpson et al. v. Alice Simpson et al. Decree of Equity Court affirmed.

James W. White et al. v. James H. Hilton. Judgment of Special Term affirmed.

Jonathan Magarity v. John J. Shipman et al. Bill and cross-bill dismissed without prejudice.

Wm. W. McCullough v. Diller B. Groff. Judgment of Special Term reversed and cause remanded for a new trial.

Emil Justh v. Ben. Holladay. Same.

In re Parker Wineman. Appeal from Commissioner of Patents. Decision of Commissioner of Patents affirmed.

S. E. Middleton v. Wm. McMurtrie. Judgment of Special Term reversed and cause remanded for new trial.

The U. S. v. Henry W. Howgate. Judgment of Special Term reversed.

Rule 54 amended.

MAY 8, 1883.

The Wash. Market Co. v. Richard C. Warthen et al. Argued and submitted.

MAY 9, 1883.

Horace L. Stiles v. Frederick Selinger. Submitted on briefs.

MAY 10, 1883.

Samuel Wolf v. Joseph Walsh. Argued and submitted.

MAY 11, 1883.

U. S., ex rel. Rumpff et al. v. The Secretary of the Interior. Petition for mandamus dismissed.

The U. S. v. Henry Howgate. Judgment of Special Term affirmed.

Edward F. Gleason, Edwin D. York, Francis E. Brantingham and J. Foshay Walker was admitted to practice.

Daniel Wolf v. Joseph Walsh. Argued and submitted.

MAY 14, 1883.

Simpson et al. v. Simpson et al. Decree of Special Term affirmed.

The Wash. Market Co. v. Richard C. Warthen. Judgment of Special Term affirmed.

Horace S. Stiles v. Frederick Selinger. Same. Francis P. B. Sands v. Mary Frick. Motion to dismiss for failure to print record.

The Fifth Baptist Church v. The B. & P. R. R. Co. Execution on mandate of U. S. S. C., affirming judgment of this court, ordered.

The U. S., ex rel. Eminent P. Halstead, administrator, &c., v. A. U. Wyman, Treasurer U. S. Argued and submitted.

MAY 15, 1883.

Daniel Wolf v. Joseph Walsh. Judgment for defendant.

Alvin W. Coleman and James S. Walker were admitted to practice.

Hamilton A. Moore, by next friend, v. The Met. R. R. Co. Argued and submitted.

Caroline Nelson v. Chas. E. Henry et al. Motion to re-argue overruled.

MAY 16, 1883.

Jonathan Magarity v. John J. Shipman. Cause dismissed without prejudice to either party.

Samuel Hecht, use, &c., v. Geo. Goldberg. Judgment of Special Term affirmed.

MAY 17, 1883.

Achison Harden, jr., v. Geo. A. Day. Judgment of Special Term affirmed.

Harry H. Alexander v. Elias E. Barnes. Judgment of Special Term reversed and cause remanded for new trial.

Chas. T. Gorham v. Mary E. Burns et al. Argued and submitted.

MAY 18, 1883.

Victor H. Olmstead, Wm. H. Landvoight and B. Frank Keller were admitted to practice.

Mary K. S. Eaton v. Daniel A. Connolly et al. Argued and submitted.

#### CIRCUIT COURT.—Justice Mac Arthur.

APRIL 28, 1883.

Kengla v. Wetzel. Judgment confessed. Sands v. Frink. Bill of exception signed and filed.

MAY 5, 1883.

Ball v. Alexander. Motion for judgment granted.

Dealham v. Marcus. Judgment of condemnation against garnishee.

Moran v. Fitzgerald. Judgment for amount admitted.

Bates et al. v. King, sr. Judgment by default. Beal v. Hempler. Motion to quash attachment granted.

Mayse & Co. v. Donnelly. Judgment by default.

Negley v. Alex. & Fred. R. R. Co. Motion for security for costs granted.

Ergood & Co. v. Burns. Motion for judgment overruled.

MAY 8, 1883.

Batters V. Dake v. Utermehle. Judgment of condemnation.

MAY 12, 1883.

Manhattan C. & S. Co. v. Gutman. Judgment by default.

National Bank v. Bigelow. Motion to release articles attached overruled.

Williamson v. Hill. Time extended to settle bill of exceptions.

Allen v. B. & O. R. R. Co. Motion for security of costs granted.

Stutz v. Met. Life Ins. Co. Bill of exceptions signed, &c.

Austin v. District of Columbia. Same.

Randall & Fish v. Fitzgerald. Motion for judgment granted, &c.

Angney v. McMichael. Motion to set aside judgment granted and leave to amend.

MAY 14, 1883.

Baxter & Bird v. Witherall. Judgment by default.

Ward v. B. & P. R. R. Co. Stricken from calendar.

Duvall & Marr v. Cochran. Same.

Hammer & Bailey v. Cranford & Filbert. Settled.

Cooley v. Scala. Suit dismissed.

Cooke v. West. Same.

Brown v. Ferris. Same.

Burche v. Sheriff. Same.

MAY 15, 1883.

Eastwood v. Fritz. Judgment below affirmed. Cooke v. West. Judgment set aside by agreement.

Cooney v. Scala. Same.

Brown v. Knox, garnishee. Judgment for garnishee.

Walker v. Waggaman. Verdict for plaintiff for \$48.

McDowell v. McFarland. Judgment affirmed. Smith & Son v. Glasscock. Verdict for plaintiff for \$50.

Riddle v. Fisher. Verdict for defendant.

MAY 16, 1883.

McCullough v. Elliot, garnishee of Killian. Verdict for garnishee.

Kimmell et al. v. D. C. Stricken from calendar. Chipman et al. v. Callaway et al. Same.

Perry's Executor v. King. Judgment on scil. refused.

United States v. Evans' Executor. Ordered off calendar.

#### CRIMINAL COURT.—Justice Wylie.

APRIL 27, 1883.

U. S. v. John W. Dorsey et al. Mr. Ker, of counsel for the Government, closed his address to the jury.

APRIL 30, 1883.

Mr. Bliss commenced his argument to the jury on the side of the prosecution.

MAY 8, 1883.

Mr. Bliss closed. It was decided that the Government should have but one closing argument or reply.

MAY 9, 1883.

Mr. Wilson began his argument for the defense, and on May 11 was still arguing. The court adjourned until May 14.

MAY 16, 1883.

Mr. Wilson concluded his argument for the defense.

MAY 18, 1883.

Robert G. Ingersoll commenced his argument to the jury for the defendant S. W. Dorsey.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

MAY 12, 1883.  
 24456. George W. Ustermehle v. Rudolph Willis. Appeal.  
 Defts atty, S. E. Bond.  
 24459. Barbour & Hamilton v. Cahill, Ward & Co. Appeal.  
 Defts atty, M. T. Teggart.  
 24460. Charles E. Barber v. Robt. D. Ruffa. Replevin.  
 Plffs atty, H. B. Moulton.  
 24461. Venable & Hyman v. Della Hynes. Bill of exception.  
 Com. sol., \$121.28. Plffs attys, Miller & Forrest.  
 24462. Dennis Long v. John W. Gray. Appeal. Defts  
 atty, A. H. Jackson.  
 24463. John W. Boswell et al. v. George P. Fenwick.  
 Damages, \$2,000. Plffs attys, Orlicher & Barton.

MAY 14, 1883.  
 24464. Martha Burch v. Godfrey Markolf. Appeal.  
 Defts atty, Chas. A. Walter.  
 24465. Joseph Fearson v. Lorenzo M. Lowm. Appeal.  
 Plffs atty, F. W. Jones. Defts atty, H. B. Moulton.  
 24466. Frank Hame v. John O'Neal. Account, \$237.92.  
 Plffs attys, Norris and Drury.  
 24467. John E. Kendall v. G. F. W. Strieby et al. Note,  
 \$223. Plffs attys, Edwards & Barnard.  
 24468. Miles Parker v. William A. Stewart. Appeal.  
 24469. Edwin A. McIntire v. Hamilton G. Fant. Appeal.  
 Defts atty, John Orulshank.  
 24470. Samuel H. Wiswall et al. v. Leonard S. Chapman.  
 Notes, &c., \$234.38. Plffs atty, W. J. Newton.  
 24471. N. White & Co. v. Letitia P. Oake. Note and account,  
 \$148.13. Plffs attys, Hagner & Maddox.

MAY 15, 1883.  
 24472-24483. The United States of America v. Collier O.  
 Frayser et al. Bond, \$2,500, \$200, \$1,300, \$1,000, \$700, \$600,  
 \$500, \$1,500, \$150, \$100, \$—, and \$200, respectively. Plffs  
 atty, Geo. B. Corkhill.  
 24484. Marvin Eastwood v. Frederick Frits. Appeal.  
 Plffs atty, W. J. Newton.  
 24485. Samuel Coas v. Samuel Cook. Pppeal. Defts  
 atty, L. G. Hine.  
 24486. Samuel O. McDonnell v. Sidney McFarland. Appeal.  
 Plffs atty, D. O'U. Callaghan.  
 24487. John Miller v. William H. May. Certiorari. Plffs  
 atty, L. Tobriner.  
 24488. John Van Riewick v. Jacob F. Ooke et al. Note,  
 \$480 10. Plffs attys, Hagner & Maddox.  
 24489. Wilson Sewing Machine Co. v. William Stiebling  
 et al. Bond, \$731.83. Plffs atty, H. W. Garnett.

MAY 16, 1883.  
 24490. Henry Kipp v. Paul J. Pels. Note, \$500. Plffs  
 atty, C. A. Elliot.  
 24491. John M. Jameson v. Martin O. Flamens et al. Account,  
 \$2,000. Plffs atty, A. O. Bradley.  
 24492. The District of Columbia v. Thos. E. Waggaman  
 et al. Bond, \$1,000. Plffs attys, Riddle & Miller.  
 24493. Christian Haurich v. John Stelzie. Account, \$90.  
 Plffs atty, C. A. Walter.

MAY 17, 1883.  
 24494. Isaac Rosekam v. John Stelzie. Account, \$35.  
 Plffs atty, same.  
 24495. Warren H. Sadler v. Edw G. Church. Account,  
 \$1,737.31. Plffs attys, Edwards & Barnard.

MAY 18, 1883.  
 24496. A. M. Brooke & Co. v. Wm. S. Matthews. Judgment  
 of Justice Walter, \$13.02. Plffs atty, R. E. Perry.  
 24497. William Muehlisen v. John Stelzie. Account, \$90.  
 Plffs atty, E. H. Thomas.  
 24498. George F. Davis v. A. B. Webb et al. Damages,  
 \$16,000. Plffs atty, Chas. S. Moore.

### IN EQUITY.—New Suits.

MAY 11, 1883.  
 24499. George W. Cissell et al. v. George F. Muth et al. For  
 injunction. Com. sol., H. W. Garnett.  
 24500. Christopher S. O'Hare et al. v. George R. Walker  
 et al. To confirm title. Com. sol., W. R. Woodward.  
 Defts sol., E. Walker.

MAY 12, 1883.  
 24501. William D. Baxter et al. v. Ephraim Wheeler. To  
 confirm contract. Com. sol., E. Fendall.  
 24502. Daniel Clark v. Charles W. King. Injunction.  
 Com. sol., W. W. Boardman.

MAY 14, 1883.  
 24503. Mary Newbern v. Mary Maybern et al. For dower,  
 sale, &c. Com. sol., E. A. Lockwood.  
 24504. John H. Merriman v. Della Merriman. For divorce.  
 Com. sol., E. T. Wiswall.

24505. Charles J. Kinsolving v. Robert M. Johnson. Judgment  
 creditors' bill. Com. sol., Hanna & Johnston.

MAY 15, 1883.  
 24506. Margarette White v. Wm. W. White. For divorce.  
 Com. sol., Chas. Felham.  
 24507. William Duvall v. Ana Mitchell et al. Partition.  
 Com. sol., William A. Meloy.  
 24508. Eda A. Dallas v. Oliver C. Dallas et al. To sell.  
 Com. sol., Smith and Webb.  
 24509. Emily L. Barbier v. Frederick T. Frelinghuysen et  
 al. Injunction. Com. sol., John F. Jones.

MAY 16, 1883.  
 24510. Rebecca Alexander et al. v. Laura Duffy. To sell.  
 Com. sol., F. E. Alexander.

MAY 17, 1883.  
 24511. Ex-parte, estate of Elizabeth McGrew, upon petition  
 of Charles E. Gibbs. To confirm infants' interests in real  
 estate. Com. sol., Edw. H. Thomas.

### PROBATE COURT.—Justice James.

MAY 11, 1883.  
 Estate of Anna Lindsley; notice of time of settlement  
 issued to executor.  
 In re Harvey Lindsley Maddox, guardian; appointed  
 and bonded.  
 Estate of John Scholz; will proved and admitted to  
 probate.  
 Estate of Wm. D. Aiken; citation to guardian to show  
 cause, &c.  
 Will and codicil of Margaret E. Reed; filed and proved  
 and admitted to probate; letters granted and administrator  
 bonded.  
 Estate of Susannah V. Walker; assignment of certain  
 parties of all their interests.  
 Estate of John Ruppert; administrator allowed to accept  
 lower rate of interest on note.  
 Emma J. Winingder, guardian; sale of sub-lot ordered.  
 Will of Joseph Reese; filed.  
 Will of Richard Joseph; filed.  
 Estate of Hannah O. Wentz; inventory returned by  
 executor.  
 William E. Woodward, guardian; authority to expend  
 money.  
 Estate of Felix Barotti; final account of administrator a.  
 t. a. passed, &c.  
 Accounts passed.  
 Job Barnard, guardian.  
 Estate of Elizabeth Gorman.  
 Estate of John Lenthall.  
 Estate of Henry McLenden.

MAY 12, 1883.  
 Harvey L. Maddox, guardian; bonded.  
 Estate of George N. Hopkins, executor; appeared in  
 answer to citation cause continued.  
 Copy of will of Margaret M. Dyer; filed and recorded.  
 Estate of James Sayers; petition for probate, will proved.  
 Estate of Isaac Delano; administrator bonded and  
 qualified.

MAY 14, 1883.  
 Estate of Virginia Tayloe; order nisi returnable June 18,  
 1883.  
 Will of Ellen Thomas; filed and proved by one witness.  
 Estate of Isabella V. Swearingen; receipt of legatee  
 filed with account of executor.

MAY 15, 1883.  
 J. Weed Corey; petition to be appointed guardian of  
 infant son.

MAY 16, 1883.  
 J. Weed Corey; appointed guardian, guardian bonded.  
 Estate of John J. F. Joachim; petition of executor to  
 review matter of petitions of Louise Joachim, Michael  
 Joachim and Margaret Krase, for citation against executor  
 to show cause, &c.

### Legal Notices.

THIS IS TO GIVE NOTICE,  
 That the subscriber, of the District of Columbia, hath  
 obtained from the Supreme Court of the District of Columbia,  
 holding a Special Term for Orphans' Court business,  
 Letters Testamentary on the personal estate of Louise  
 Joachim, late of the District of Columbia, deceased.  
 All persons having claims against the said deceased are  
 hereby warned to exhibit the same, with the vouchers there-  
 of, to the subscriber, on or before the 4th day of May  
 next; they may otherwise by law be excluded from all  
 benefit of the said estate.  
 Given under my hand this 4th day of May, 1883.  
 MICHAEL JOACHIM, Executor.  
 F. H. MACKAY, Solicitor.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliab Kingman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.

WILLIAM W. BOYCE,  
ABNER KINGMAN,  
Executors.

20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Loyal Cowles, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

ISRAEL L. TOWNSEND, Administrator.  
ORITENDEN & MACKAY, Solicitors. 20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann Phillips, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1883.

MRS. JANE LYNCH, Administratrix.  
HANNA & JOHNSTON, Solicitors. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.** Holding a Special Term for Orphans' Court Business. May 11, 1883.

In the case of Hudson Taylor, Executor, of Anna Lindsey, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of June, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all legatees and persons entitled to distributive shares (or creditors) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
PETER HULME, Solicitor. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 15th day of May, 1883.

DANIEL MASON } No. 8,568. Eq. Doc. No. 23.

RACHEL MASON ET AL. }  
On motion of the plaintiff, by Messrs. Carnal & Miller, his solicitors, it is ordered that the defendants, William Mason and David Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. CHAS. P. JAMES, Justice.  
True copy. Test: 20-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 15th day of May, 1883.

WILLIAM DUVAL } No. 5567. Eq. Doc. 23.

ANN DUVAL MITCHELL ET ALIAS }  
On motion of the plaintiff, by Mr. William A. Meloy, his solicitor, it is ordered that the defendants, Anna D. Mitchell, Mary J. Boone, Henry O. Boone, Julia A. Anderson, Geo. W. Anderson, Wm. H. Vermillion, Harriet Ferguson, Agnes Norfolk, Geo. P. Norfolk, Alice Cranford, Thomas Cranford, Jeremiah Sweeny and John Thomas Sweeny, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 15th day of May, 1883.

AUGUSTUS S. WORTHINGTON ET AL. } No. 8428. Eq. Doc. 23.

GEORGE C. RANDALL ET AL. }  
On motion of the plaintiffs, by Messrs. Worthington and Hagner, their solicitors, it is ordered that the defendant, George C. Randall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** holding a Special Term for Probate Business.

In re estate of Virginia Tayloe, deceased.

Upon hearing the petition this day filed of Virginia Tayloe Lewis, to propound the Will and Testament of said deceased, and that Administration be granted on said estate with the will annexed, it is, this 14th day of May, A. D. 1883, ordered, that the prayer of said petition to admit the Will to Probate and Record and that Administration be granted to her, said Virginia T. Lewis, unless cause be shown to the contrary on or before the 15th day of June next. Provided, that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: H. J. RAMSDELL,  
Register of Wills, D. C.

JESUP MILLER, Proctor.

MAY 15th, A. D. 1883. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.** Sitting in Equity. May 10, 1883.

CHARLES A. CRAIG } No. 8302. Eq. Doc. 23.

WILLIAM T. CRAIG ET AL. }  
The trustee in this cause, having reported that on Monday, the 7th day of May, 1883, he sold to Mr. A. H. Herr, that part of lot 135, in Beatty & Hawkins' addition to Georgetown described in the bill in this cause, for the price of \$1,300, ordered, this 10th day of May, 1883, that said sale be ratified and confirmed unless cause to the contrary be shown the 15th day of June, next. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Moses Ogle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1883.

18-3 SAM'L. R. BOND, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 2d day of May, 1883.

HERMAN COPPERMAN } No. 24,412. At Law.

HEIMAN KURZMAN. }  
On motion of the plaintiff, by Mr. Garnett, his attorney, it is ordered that the defendant, Heiman Kurzman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAO ARTHUR, Justice.  
True copy. Test: 18-3 R. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 34th day of April, 1883.

FRANCIS D. SHORMAKER ET AL. } No. 8,531. Eq. Doc. 23.

EDWARD SHORMAKER ET AL. }  
On motion of the plaintiffs, by Mr. Craig, their solicitor, it is ordered that the defendants, Edward Lukens, Lewis A. Lukens, Mary T. Lukens, David Lukens, Ellen Lukens, Mary Lukens, Margaret A. Smedley, Albin M. Smedley and Mary E. Fowler, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 17-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles A. Watts, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1883.

19-3 MARTIN F. MORRIS, 1306 F Street, n. w.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Hervey King, late of Portsmouth, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

MARY P. KING, Administratrix.  
THOS. H. CALLAN, Solicitor. 19-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1883.

MARY M. HUGH, Administratrix.  
B. H. WEADE, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. May 8, 1883**

In the case of William A. Gordon, Administrator of John B. Blake, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 8th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8, 1883**

In the case of George E. Hamilton, Administrator of Thomas T. O'Leary, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 1st day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of May, 1883.**

CASSIMER BOHN

No. 8539. Eq. Doc. 23.

JOHN FOY ET AL.

On motion of the plaintiff, by Mr. James McD. Carrington, his solicitor, it is ordered that the defendants, John Foy, James O. Foy, John M. Foy, Samuel C. Foy and heirs unknown of John Foy, cause their appearance to be entered hereon on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.  
True copy. 19-3 Test: E. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of April, 1883.**

IN RE THE ALLEGED LUNACY } No. 8484. Equity Docket.

OF GEORGE BRENT.

On motion of the petitioner, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the said George Brent, the alleged lunatic, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A true copy. Test: 17-3 W. S. COX, Justice.  
E. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of S. Louisa Yeabower, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

17-3 SAM'L MADDOX, Administrator c. t. a.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. Erhard Mack, late of the City of New York, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1883.

JAMES H. MAER.  
WM. PIERCE BELL, Solicitor. 17-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the matter of the Estate of Mary F. Woods, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Elizabeth M. Woods.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

Test: 17-3 WALTER S. COX, Justice.  
H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of J. L. Waldrop, late of the State of North Carolina, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of April, 1883.

17-3 GEORGE F. APPELEY.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the case of Danle W. Middleton, Jr., Administrator of Jacob W. Ker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

YOUNG ET AL.

v.

YOUNG ET AL.

Equity. No. 7,771.

Charles Walter, the trustee in this cause having reported to the court that he has sold to Horace K. Fulton, the real estate mentioned in the proceedings in this cause, viz.: lots lettered "F" and "G" in Coltman's sub-division of lots four, five, six and seven, in square numbered two hundred and forty-five, in the city of Washington and District of Columbia, at and for the sum of eight thousand and five hundred dollars cash, and that said Fulton has fully complied with the terms of sale:

It is, thereupon by the court this 8th day of May A. D. 1888, ordered, adjudged and decreed that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the eleventh day of June, 1888. Provided, a copy of this order be published once in each week for three successive weeks in the Washington Law Reporter prior to said eleventh day of June, 1888.

By the Court.  
A true copy.

CHAS. P. JAMES, Justice.  
Test: 18-8 E. J. MILES, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rachel W. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1888.

GEO. A. BARTLETT, Administrator.  
CHAS. BROWN, Solicitor. 19-8

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Sarah Hammond, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of April, 1888.

19-8 EDWARD H. THOMAS.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1888.

WILLIAM DUVAL,  
WILLIAM G. GREEN,  
Administrators.

WM. A. MELOY, Solicitor. 19-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 8, 1888.**

In the matter of the Estate of S. Pamela Mackey, late of the District of Columbia, deceased

Application for Letters of Administration on the estate of the said deceased has this day been made by Edmund W. M. Mackey, of Mount Pleasant, S. C.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: WALTER S. COX, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
CHITTENDEN & MACKAY, Solicitors. 19-8

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Delano, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1888.

JAMES S. DELANO, Administrator.  
F. P. CUPPY, Solicitor. 19-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1, 1888.**

In the matter of the Will of Fisher A. Foster, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Snell.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
B. F. LEIGHTON, Solicitor. 19-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 1, 1888.**

In the case of Ivory G. Kimball, Administrator of Garrett Barry, Jr., deceased, the Administration aforesaid has, with the approval of the court, appointed Friday, the 26th day of May A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-8 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 4, 1888.**

In the matter of the Estate of James O. Reid, late of the District of Columbia, deceased:

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary Higgins, of Prince William Co., Va., a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 1st day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
O. STORRS, Solicitor. 19-8

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

VIRGINIA F. PAYNE ET AL.

v.

WILLIAM T. PAYNE ET AL.

Eq. No. 8,336. Dec. 23.

Edward H. Thomas and Glen W. Cooper, trustees, paying reported that they have sold original lot 18, in square 16, to William T. and Charles B. T. Payne, at and for the sum of \$7,100; it is, by the court this fourth day of May, A. D. 1888, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the fifth day of June, A. D. 1888. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last named day.

By the Court.

A true copy. CHAS. P. JAMES, Justice.  
Test: 19-8 E. J. MILES, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - May 26, 1883.

GEORGE B. CORKHILL - - - EDITOR

## Liability of National Bank for Special Deposit.

In the case of *Bank v. Zent* (Ohio Supreme Court), the writ of error was prosecuted to reverse a judgment of the court below, in favor of Zent against a national banking association, organized under the act of Congress of June 3, 1864, for the value of certain United States bonds alleged to have been deposited with the bank, and by the bank wrongfully converted to its own use.

The facts do not particularly appear in the report of the case (3 Ohio Law Journal, 606), but it was urged in defense of the bank, that whatever arrangement or contract existed had been made between the defendant in error and W. S. Hickox, the cashier, individually, and not with him as an officer of the bank, and that if he did attempt to bind the bank without the knowledge of the directors, the agreement was *ultra vires* and absolutely void.

The court were of the opinion that the bill of exceptions warranted the finding of the court below that the bonds had been received by the bank as a special deposit for safe keeping; that with the full knowledge and acquiescence of its directors and officers the bank had engaged in the business of receiving United States bonds on deposit for safe keeping; and that Hickox, as cashier, had general authority to receive such special deposits for safe keeping; and that the rights of the defendants in error to recover the value of the bonds did not depend upon proof that special authority was given the cashier in the particular instance.

Upson, J., delivering the opinion, says, that the decisions of State courts, holding that national banks were not responsible for the safe keeping of special deposits entrusted to their care, even when such deposits were made with the knowledge and acquiescence of the directors, and that the banks could not be held liable even for the gross negligence of

their officers, rest upon the assumption that the act of Congress under which the national banks are organized expressly sets forth the powers conferred upon the banks, and does not include among them the power to receive special deposits; and that such power is not given them by the grant of all such incidental powers as shall be necessary to carry on the business of banking; but that the Supreme Court of the United States, in the case of *The First National Bank of Carlisle v. Graham*, 100 U. S., 699, had conclusively determined the proper construction of the act, and decided not only that if a bank be accustomed to take such deposits, and this is known and acquiesced in by the directors, it is liable to the same extent as if the deposit had been authorized by the terms of the charter, that the provision of the law authorizing a bank after its failure "to deliver special deposits" clearly implied that as a part of its legitimate business it might receive them.

That in the case under consideration it was proved to have been part of the ordinary business of the bank to receive United States bonds for safe keeping, and it followed that the cashier, in dealing with the defendant in error, acted within the scope of his authority as cashier, and that the bank were therefore bound by his acts.

*Will — Cancellation — Revival of Former Will not destroyed — Intention — Subsequent Declarations of Testator.* The cancellation of a will, duly executed, and containing a clause expressly revoking former wills, does not as matter of law revive a former will which has not been destroyed; but it is a question of intention, to be collected from all the circumstances of the case. Subsequent declarations of the testator are admissible in evidence for the purpose of showing his intention in the matter.—[*Pickens, Administrator v. Davis*, Supreme Judicial Court of Massachusetts. February, 1883.]

*Negligence—Stock causing Injury to Trains.* The owner of stock is liable in damages for an injury resulting from a collision with the stock trespassing on a railroad track, if his negligence is the proximate cause of the injury.—[*Annapolis and Elk Ridge R. R. Co. v. Baldwin*. Court of Appeals of Maryland. October Term, 1882.]



# Supreme Court District of Columbia.

JANUARY TERM, 1883.

REPORTED BY FRANKLIN H. MACKAY.

WILLIAM W. McCULLOUGH

v.

DILLER B. GROFF.

Law. No. 22,112.

{ Decided May 7, 1883.

{ The CHIEF-JUSTICE and Justices HAGNER and COX sitting.

1. Where, in a reference to an auditor under the Act of Md., 1785, Ch. 80, the proceedings before the auditor are such as in actions of accounts, the right of hearing before the court as to all questions of law and of trial by a jury upon all matters of fact is to be preserved to the contestants.
2. And where the auditor undertakes to decide all questions of fact it would seem to be clearly against the spirit of the statute to admit the report before the jury even as *prima facie* evidence of the truth of its assertions or calculations.

THE CASE is sufficiently stated in the opinion.

EDWARDS & BARNARD and HANNA & JOHNSTON for plaintiff.

F. W. JONES and JESUP MILLER for defendant.

Mr. Justice HAGNER delivered the opinion of the court.

This action was brought on the common counts, for lumber and materials furnished, and for money due on account stated. The amount claimed by plaintiff was \$3,342.80, with interest from November 7, 1878.

The defendant pleaded in abatement that certain equity suits between the same parties, which were brought to foreclose mechanics' liens, involving the same cause of action, were still depending in this court.

Issue was joined on this plea, and the case was tried on that issue before a jury, March 23, 1882; the result of which was a verdict and judgment for the amount of the plaintiff's claim.

The defendant moved for a new trial, which was granted.

Afterwards the defendant pleaded: 1, not indebted; 2, payment; and, 3, set-off; claiming on account annexed, \$1,775.

The plaintiff joined issue on the pleas, and replied "not indebted" as to the set-off; and the defendant joined issue on this replication.

At the next term, when the case was called and before the jury was sworn, the following order was passed:

"This case being reached for trial, and it appearing to the court that it is necessary to examine and determine mutual accounts between the parties in this case, orders that the accounts and dealings between the parties in this case, as the same are stated and set out in the pleadings in this case, be audited and stated by the auditor of this court."

When the auditor was about to commence his investigation under this order, the defendant interposed an objection to any proceedings before the auditor, "because it hath not appeared that it may be necessary to examine and determine on mutual accounts between the parties, and because the court had not discharged any jury before ordering the reference to the auditor."

The auditor proceeded to take the testimony of the parties, as well as of other witnesses produced before him; and returned a report, in which he stated, as the result of his examination, that there was due from the defendant to the plaintiff the sum of \$2,812.10, as of 7 November, 1878.

To this report the defendant filed three exceptions:

1. Because the auditor omitted to credit the defendant with the sum of \$1,000 for compensation for services in building a brick warehouse.

2. The defendant denies that he purchased from the plaintiff the lumber and other articles mentioned in the account filed by said auditor; denies that he agreed to pay the prices mentioned in said account for them; denies that they are worth such prices as are set down in said account, and denies that said lumber, &c., was delivered to or received by the defendant.

3. He excepts also for other errors, uncertainties and improper charges apparent on the face of said report and account.

When the cause was called for trial, the plaintiff read to the jury the order of reference and the report of Mr. Payne, the auditor, against the objection of the defendant, and thereupon rested his case and moved for a judgment for the amount stated in the report as due by the defendant. The defendant insisted upon his exceptions to the report and claimed that he had a right to a trial by jury upon the matters therein set forth.

In the words of the record, the court thereupon stated to the defendant's counsel that the defendant had a right to a jury trial upon the matters stated in his exceptions; but should they not be sustained by proofs, the report of Jas. G. Payne, above alluded to, would be given to the jury as the basis upon which they might find a verdict; and directed

the defendant to proceed to the jury with his testimony.

The defendant thereupon introduced witnesses to prove the performance by him of work for the plaintiff, in support of his plea of set-off, and to impeach the correctness of the plaintiff's charges for materials; and offered to prove by his own testimony that when he remonstrated with the plaintiff for charging him in his account book at higher rates than he had agreed to supply him, the plaintiff replied, "Oh, never mind the books; I don't want my clerks to know our business arrangements; when we come to settle, and you get your bill, you can take it and mark all the prices down to those we had agreed upon." To the admissibility of this testimony the plaintiff objected, and the first exception was taken to the overruling of this objection.

1st. If the action of the court in admitting the report of the auditor before the jury was correct, this objection was untenable. Such declarations of a plaintiff would certainly be admissible under ordinary circumstances as tending to impeach the correctness of his present claim, by proof of previous admissions that he knew it was too large. But if the report of the auditor, with the account referred to, were improperly before the jury, the evidence excepted to, with much that preceded, was irregularly presented. It therefore becomes proper to examine the rule No. 54, under which the reference to the auditor was made, with the Maryland act of 1785, ch. 80, § 12, upon which the rule was based.

The section of the act is in these words:

"That in all actions brought or hereafter to be brought in any court of law of this State, grounded upon an account, or in which it may be necessary to examine and determine upon accounts between the parties, it shall and may be lawful for the court where such action may be or remain for trial, to order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there shall be such proceedings thereon as in cases of actions of account."

The rule is narrower than the act, since it is confined to cases of "mutual accounts between the parties;" whereas the statute applies as well to "all actions grounded upon an account."

The law is nearly a century old, and must have been repeatedly acted upon, and yet there is no reported decision in Maryland giving it an explicit construction. For in the only two cases found in the reports of that State in which it seems to have been considered, the court contented itself with point-

ing out the irregularities in the particular cases without stating what would have been the proper mode of procedure.

The statute was three times considered by the old circuit court in this District, and twice by this court as now organized.

But the decision in the first case of the circuit court, *Barry v. Barry*, 3 Cranch, 120, is at variance with the conclusions announced in the subsequent cases of *Bank v. Williams* and *Bank v. Johnson*, reported in the same volume.

In 2 *Mac Arthur*, *Campbell v. District of Columbia*, the court only declared that the case was not a proper one for a reference. And in 3 *Mac Arthur*, *Strong v. District of Columbia*, they simply disapproved of the manner in which the report of the auditor was presented to the jury.

We are, therefore, not much assisted in our examination of the question by the researches of our predecessors.

There had been an earlier law in Maryland, 1778 (March), ch. 9, respecting suits brought by the State against defaulting receivers of public money; by section 5 of which the general or county courts were empowered, if need be, to appoint auditors to state the accounts offered by such defendants, and to give judgment for such balance as should appear to be due on the return of such auditor.

The act of 1785, ch. 80, evidently contemplated a less summary mode of disposing of the report of the auditors to be appointed under its provisions, by declaring that there should be such proceedings upon the audit "as in cases of actions of account."

Without going into an explanation of the mode of procedure in that antiquated and almost obsolete form of action, it is enough to say that it allowed repeated appeals during the progress of the audit to the court, where issues of law or of fact, as from time to time they were raised before the auditors, were triable, *toties quoties*, before the court or the jury, according to the nature of the particular question presented. And as it was also a principle controlling the subject that no matter in bar of the action was examinable before the auditor, such defenses as were properly pleadable in bar must have been disposed of by jury trial, or otherwise, before the judgment of *quod computet*, which was the necessary forerunner of the audit, was entered. Hence, at one stage or another of the proceedings, a trial by jury upon all matters of fact was obtainable by the parties.

When, therefore, the proceedings before the auditors under the act of 1785, ch. 80, were to be such "as in cases of actions of account,"

the right of hearing before the court as to all questions of law, and of trial by a jury upon all matters of fact, was intended to be preserved to the contestants. And where, in point of fact, the auditors have undertaken to decide all questions of fact incorporated into their reports, without a reference to a jury, although such trial had been insisted on by one of the parties, it would seem to be clearly against the intent and spirit of the statute to admit the report before the jury even as *prima facie* evidence of the truth of its assertions or calculations.

In my judgment it was designed by the rule that in case of mutual accounts, where in the opinion of the judge it was necessary to do so, the court, with a view of lightening the labors of the jury, and saving time, should depute to auditors the ministerial duty of arranging, methodizing and explaining the accounts, examining the calculations, and reporting the result of their labors to the court. In the cases where such a reference would be considered necessary, an inquiry of this nature would devolve upon the jury and counsel great labor, which could be but imperfectly performed during a trial and then with constant liability to mistake. Frequently such examinations would require the production in court of numbers of papers and books, perhaps from public offices, at hours when they could not conveniently be spared from official use. Few counsel, not trained accountants, would wish to trust themselves with the important interests of their clients without the assistance of trained experts in book-keeping, where complicated accounts of partnerships or banks were involved; and in case of a refusal by either party to call in such aid, this statute and rule would authorize the court to compel such an examination by its selected agents.

But I do not think the statute or the rule attached such weight to this audit, as to authorize it to be read in evidence to the jury, in proof of any claim of either party controverted by his opponent at the trial, unless it had previously been admitted by the pleadings or before the auditor.

By analogy to practice in somewhat similar cases, the objection to the auditor's report should be made by exceptions, which certainly should be expressed with reasonable precision; and if taken to such a report as I think the auditor is limited to by the law, would be confined to errors in formal matters of the accounts.

It might be that under this construction the auditor's work would prove of small value; but it might also, if the suitors were both

really anxious for a full and fair settlement, result in a great economy of time and labor, and clear up mutual misunderstandings previously existing between the parties. And it may well be that the discontinuance of several of the cases referred to in the authorities, resulted from the full statements of the positions of the contestants, for the first time brought to their attention in this manner by impartial accountants.

However this may be, we must construe the law and the rule as we find them; and in my opinion there was no warrant in either for the submission of the audit in evidence before the jury, "as the basis upon which they might find their verdict."

2d. It was further inadmissible in evidence, because it was founded in part upon the testimony of witnesses other than the parties, taken before the auditor. By the Statute 4th Ann, ch. 16, which authorised actions of account to be brought by one joint tenant or tenant in common against his co-tenant, the auditors to be appointed were authorized to administer an oath to the parties and examine them: but, as was said in 48 Md., 1, Wisner Wilhelm, no such right exists to examine other witnesses. And that case further decides that even a special clause in the order of reference, authorising the auditor to examine any witnesses, was invalid. Such a report would be the mere statement of the opinion of an unauthorised person, founded upon extra-judicial oaths, in matters beyond his legal competency, and was in the highest degree hearsay.

We will add that we have no doubt the reference might be made as well before the jury was sworn as afterwards; and that the second exception of the defendant, if it had been interposed to a valid report, should have been held to be too general in its terms, for it amounted to nothing more than the general issue plea to a declaration in assumpsit.

Since it results from this view of the subject that the trial below was conducted upon wrong principles, we must remand the case for a new trial; and it is not necessary for us to examine the two other exceptions presented by the record.

With the purpose of preventing similar embarrassment in the future, we have thought it proper to substitute for Rule 54 one more explicit in its terms.\*

Judgment reversed and new trial awarded.

\*The new rule substituted for rule 54 will be found in No. 19, of this volume of the LAW REPORTER.

# United States Supreme Court.

No. 234.—OCTOBER TERM, 1882.

JOHN H. ROUNTREE, Plaintiff in Error,  
vs.  
ERNEST F. SMITH and MILTON C. LIGHTNER.  
*In Error to the Circuit Court of the United States for the Western District of Wisconsin.*

Mr. Justice MILLER delivered the opinion of the court.

Smith and Lightner, plaintiffs in the circuit court, recovered against Rountree, plaintiff in error, a judgment for \$5,614.46 for services rendered and money advanced by them, as brokers and members of the board of trade of Chicago, for Rountree at his request.

The case was tried before a jury, the parties being the principal, if not the only witnesses, and their testimony, with some correspondence by letters and telegrams, was all the evidence.

The record presents but two questions necessary to be decided.

It was alleged by the defendant that on the 11th of March, 1879, he had notified the plaintiffs in writing that thereafter he would advance them no more margins, and would not be responsible for any losses on contracts made by them in his name. To which their answer was a denial of such instruction, and an allegation that, if it had been given, it was subsequently withdrawn and waived by other instructions and actions of defendant.

Specific questions on this subject were submitted by the court to the jury, under the practice allowed by the Wisconsin statute.

Some objection is made to the form of some of these questions, which we do not think necessary to consider here, for the fourth question and the answer of the jury to it render the other questions and answers immaterial. That question and answer is as follows:

"Fourth. If you find there was such a contract or understanding between the parties as is mentioned in the last question, did the defendant, by his subsequent acts, declarations, directions or conduct, waive the same and become liable for further losses incurred over and above the money so placed in plaintiffs' hands? Answer. Yes."

It was undoubtedly competent for defendant to withdraw, waive, or countermand his former order on this subject, and this could be done verbally or by actions, and need not be in writing, and the fact found by the jury that he did so renders his former notice wholly immaterial to the issue.

The counsel for defendant resisted recovery against him, on the ground that the sales and purchases made for him by plaintiffs were gambling contracts on the prices of the various articles of produce to which they related, never designed to be actually performed by delivery, but the damages were to be adjusted and payments made and accepted, according to the difference between the contract price and the market price at the date fixed for delivery. And on this subject he asked certain instructions of the court, which were refused. The court also charged the jury that there was no evidence on this subject which they could consider. An exception was taken to this ruling, and a bill of exception purports to embody all the testimony.

The evidence of the defendant on this point was that he gave the instructions to buy. He says: "I could not say that I had any understanding on the subject of the nature and character of the board of trade deals, whether the property was to be actually delivered or whether it was to be settled for."

It is obvious, therefore, that so far as plaintiff, one of the parties to all these contracts, which he now impeaches, is concerned, they were not gambling contracts, and that he had no understanding or agreement, express or implied, that they were bets upon the future price of the article.

The other party to these contracts, or rather parties (for the contracts were numerous), are not produced, nor their testimony given, and there is no direct evidence that any of them either bought or sold with any other purpose than to perform the agreement as its terms bound them.

The plaintiffs, in answer to questions on this subject, say that in no instance had they any agreement with the parties to the contracts made by them for Mr. Rountree, that performance was not expected or intended, but a mere adjustment of differences, and they say that actual delivery of the article was made in some of them. So that as to these contracts, in regard to which the services were rendered and money advanced by plaintiff for defendant, there is no evidence whatever that they were not *bona fide* contracts enforceable between the parties, and made to be performed.

Evidence was given that a very large proportion of all the contracts made for the sale of produce at the board of trade of Chicago, were settled by payment of differences, and that nothing else was expected by the parties to them, and the number of these in proportion to the number of *bona fide* contracts, in which delivery was expected and desired, is

said to be so large as to justify the inference that it was so in these cases.

But since the plaintiff testifies that he had no such understanding, since nothing is proved of the intention of the other parties, and since the contracts were always in writing, we do not think the evidence of what other people intended by other contracts of a similar character, however numerous, is sufficient of itself to prove that the parties to these contracts intended to violate the law, or to justify a jury in making such a presumption.

It is also to be observed that the plaintiffs in this case are not suing on these contracts, but for services performed and money advanced for defendant at his request, and though it is possible they might, under some circumstances, be so connected with the immorality of the contract as to be affected by it if proved, they are certainly not in the same position as a party sued for the enforcement of the original agreement.

Without pursuing the subject further, we are of opinion that there was no evidence on this subject which ought to have been submitted to the jury, and the court was right in withdrawing it from their consideration.

We see no error in the record, and the judgment of the circuit court is affirmed.

— — — — —  
**Broker—Payments—Bar.**

**CROSBY ET AL. vs. HILL.**

*Ohio Supreme Court, April 24, 1883.*

[To appear in 39 Ohio St.]

A broker who was not intrusted with the possession of the property, contracted in his own name to sell the same to a vendee, who had no knowledge that the broker was not the real owner, but dealt with him as such. The broker notified his principals that he had sold for them, and directed where to ship the property to the purchaser. The owners, without any knowledge that the broker had contracted in his own name, and without any conduct on their part, clothing the broker with authority to receive payment for them, or any possession, actual or constructive, of the property, delivered the same to the vendee.

*Held*, Payment by the purchaser to the broker, under such circumstances, is not a bar to the right of recovery by the owners.

**MOTION** for leave to file petition in error to Superior Court of Cincinnati.

The plaintiffs, L. S. Crosby and W. W. Collins, filed their petition against the defendant William H. Hill, alleging that on or about March 12, 1881, they were partners and engaged in the lumber business at Greenville, Mich. That one Roth, a lumber broker in Cincinnati, represented to them that he had, as such broker, sold for them to the defendant one carload of shingles at three dollars and

fifty-five cents per thousand; that thereupon they shipped to their own order seventy thousand shingles to be delivered to Hill by the railroad company, upon payment by Hill of the freight thereon; that about March 31, 1881, Hill, or some one for him, paid the freight and received the shingles, but he has refused and failed to pay plaintiffs for them or to return them and prays for a judgment for one hundred and ninety-seven dollars and fifty cents, the value of the shingles after crediting the freight paid.

The answer denies the conversion of the shingles, the ownership of the plaintiffs, and any indebtedness to the plaintiffs; and avers that defendants bought the shingles of Roth and paid him the full value thereof, and that when he made such payment he had no knowledge from whom Roth purchased the same, or that plaintiffs claimed any title or interest therein. The allegation of want of knowledge is denied by the reply.

Upon the trial, the plaintiffs offered evidence that Roth, in advising them of the sale, directed them to ship the goods to Glendale and send the invoice to Cincinnati; that thereupon they shipped the goods to Glendale, to their own order, and mailed to defendant, at Cincinnati, an invoice and also an order on the railroad agent at Glendale to deliver the goods on payment of the freight. The defendant offered evidence that he dealt with Roth as a principal, not knowing that he was a broker; that he never received the invoice and delivery order; that from the time of making the contract with Roth until after the middle of April, he was a member of the legislature and living at Columbus attending its sessions; that he there received notice from Roth that the shingles were about to arrive; that he instructed his agent to receive them and pay the freight, which was done; that he paid Roth for the same on April 21, 1881, and that he never heard that plaintiffs claimed any interest in them until May 26, 1881, when they wrote demanding payment.

It was admitted upon the trial, that the plaintiffs were in fact the owners of the shingles, notwithstanding the denial of such ownership in the answer.

Part of the testimony of the plaintiffs consisted of a deposition of one of them, taken under a notice which omitted to state that such plaintiff would be examined. The court, by agreement of counsel, submitted to the jury the single question, whether the defendant, at the time he paid Roth, had notice of plaintiffs' rights or claim, and the jury having reported that they were unable to agree upon that question, the court directed them, that

however that question might be determined, the plaintiffs were entitled to a verdict, and to return such verdict, leaving only the question of the value of the property for their determination. In response to such charge a verdict was returned for the plaintiffs. The charge was excepted to by the defendant, who also excepted to the refusal of the court to give certain instructions asked by him. A motion for a new trial was made and heard by the court in general term, overruled, and judgment entered on the verdict. Leave is now asked to file a petition in error in this court to reverse that judgment.

Cornell & Marsh, for the motion, cited *Judson v. Stillwell*, 26 How., Pr., 513; 46 Ia., 181; *Bordmanville Mch. Co. v. Dempster*, 2 Canada S. C., 21; *Boulton v. Jones*, 2 H. & N., 564; 123 Mass., 28.

Wilby & Wald, *contra*, cited *Hamet v. Lecher*, 37 Ohio St., 350; 2 Kent (12th ed.), 622; 1 Moody & Rob., 326; 2 Barn. & Ald., 137; 7 Best & Smith, 515; 24 Mich., 36; 88 Ia., 298; 15 Reporter, 127; 105 U. S., 360.

DOYLE, J.:

The allegations of the petition that Roth, a lumber broker in Cincinnati, represented to plaintiffs that, as such broker, he had sold for them to the defendant, the carload of shingles, and that such shingles were shipped by them, to their own order, to be delivered to the defendant by the railroad company upon the payment of the freight, are not denied in the answer. There is no allegation in the answer, nor is there anything in the evidence tending to show, that the plaintiffs ever authorized the broker to receive payment for them, ever entrusted the broker with the possession of the property, or, by any conduct of theirs, enabled him to appear as owner of the goods, and thereby impose upon a third person who was without fault; or that the plaintiffs had any knowledge that Roth contracted in his own name and not in theirs, from which any ratification of such contract can be inferred, but the contrary affirmatively appears from the allegations of the petition. The case made by the defendant is that he dealt with Roth, believing him to be the owner, and paid him as such without knowledge of the rights of plaintiffs.

The answer contained a denial of the ownership of plaintiffs, but that was withdrawn at the trial and the title of plaintiffs admitted. Without such denial, the question now presented might well have been raised by a demurrer to the answer. In view of the peremptory charge of the court all the proof offered by the defendant, pertinent to the issue, must be taken as true, and as that proof tends to

sustain the allegations of the answer (with the denial of ownership omitted) the question is substantially the same as would be presented by such a demurrer.

The case presented, therefore, is this: A broker who is not entrusted with the possession of property, contracts in his own name to sell the same to a vendee, who has no knowledge that he is not the real owner, but deals with him as such. The broker notifies his principals that he has sold for them, and directs where to ship the property to the vendee. The owners, without any knowledge that the broker has contracted in his own name, and without any conduct on their part clothing the agent with authority, express or implied, to receive payment for them, or any possession actual or constructive of the property, delivers the same to the vendee; will payment by the vendee to the broker, under such circumstances, without knowledge of the rights of the owner, prevent the owners from recovery?

In *Baring v. Corrie*, 2 B. & Ald., 137, this question is distinctly answered in the negative. "The broker has not the possession of the goods and so the vendee cannot be deceived by that circumstance; and besides, the employing of a person to sell goods, as a broker, does not authorize him to sell in his own name. If, therefore, he sells in his own name he acts beyond the scope of his authority and his principal is not bound. But it is said that by these means the broker would be enabled by his principal to deceive innocent persons. The answer, however, is obvious that he cannot do so, unless the principal delivers over to him the possession and indicia of property." *Ibid.*, 148.

In *Drakeford v. Piercy*, 7 Best & Smith, 515, there was a declaration for goods sold and delivered; plea, that the plaintiff sold and delivered the goods by one Davies, his agent in that behalf; that defendant purchased of Davies, not as agent but as vendor on his own account; that Davies sold as actual vendor; that defendant had no notice or knowledge to the contrary until after payment; that he paid the whole price to Davies, *bona fide* believing that he was vendor on his own account and entitled to receive payment. A demurrer to the plea was sustained.

After citing *Barring v. Corrie*, *Blackburn, J.*, says: "The defense of payment here must rest on the plaintiffs having, by improper conduct, enabled Davies to appear as proprietor of the goods, or having clothed him with real or apparent authority to receive payment. But the plea carefully avoids any statement to that effect.

To the same effect is *Temenza v. Brinsley*, 114 E. C. L. Reports, 18 C. B. (N. S.) 467.

On the other hand, in *Borries v. The Imperial Ottoman Bank*, 9 Law Reports (C. P.) 38, to a similar declaration, the plea was "the goods were sold and delivered to the defendants by S. & Co., then being the agents of the plaintiff, and entrusted by the plaintiff with the possession of the goods as apparent owners thereof;" that S. & Co. sold in their own name as their goods, and that defendants had no knowledge that plaintiffs were the owners of the goods, &c. The plea was held to be good because of the statement, absent from the pleas in the former cases, that the agents were entrusted with the possession as apparent owners. The American authorities sustain the rule thus established by the English courts. Wharton on Agents and Agency, §§ 712-714; Story on Agency, §§ 28, 33, 109; Benjamin on Sales, 3 Am. Ed., 742; Seiple v. Irwin, 30 Pa. St., 514; Higgins v. Moore, 34 N. Y., 417; Saladori v. Mitchell, 45 Ill., 83; Brown v. Morris, 83 N. C., 254; Clark v. Smith, 88 Ill., 298; Koreman v. Monaghan, 24 Mich. 36; McKindly v. Dunham, 55 Wis., 515; and see *Roland v. Gundy*, 5 Ohio., 202.

To the rule thus established there are certain exceptions resting upon the usages of certain lines of business. Wharton on Agency, § 713; Story, Agency, § 109; Benj., Sales, § 742; but such usages are matters to be pleaded and proved, and are wholly absent from the case at bar.

The distinction between this case, and one where an agent is acting within the scope of his authority, or a bailee, factor or commission merchant, entrusted with the possession of the property and the power to sell, and thus enabled to deal with it as his own, is very apparent. In the latter cases, like *Thorn v. Bank*, 37 O. S., 254, where the agent sells the property, receives payment and appropriates it to his own use, the loss must fall upon the principal who confides in the agent and places the power in his hands to deceive purchasers. The question submitted to the jury, whether defendant had knowledge of plaintiffs' claim was not controlling. Its determination in favor of the defendant would not have defeated plaintiffs' recovery. It was, therefore, an immaterial issue and the peremptory charge was right. There were no facts in the case that tended to show a ratification of the unauthorized contract of the agent, for the reason that such unauthorized contract was not known to the plaintiffs; *Bennecke v. Insurance Co.*, 105 U. S., 360. Defendant had the means of knowledge at his command, and the fact that Roth had not the possession of

the property he was selling, was sufficient to require of defendant that, before payment, he should ascertain to whom payment was due.

There was no error in admitting the deposition. Where a witness is competent, and the testimony relevant, and no exceptions are taken to it before the commencement of the trial, the objection is waived; *Rev. Stats.*, § 5285. Besides, in the view we take of the case, there could be no injury to the defendant thereby.

Motion overruled.

**Will; Devise in Restraint of Marriage; Limitation Over in Event of Widower's Second Marriage.**

**BOSTICK vs. BLADES.**

*Maryland Court of Appeals, January 12, 1883.*

1. A devise by a will of her real estate to her husband for life, "if he shall not marry," but in the event of his marriage to her brother in fee, is valid; and the husband having married again, the brother is entitled to recover in ejectment the estate so devised.
2. There is no substantial distinction between a condition imposed in restraint of a second marriage of a woman, and a like condition in restraint of a second marriage of a man. They are alike valid and effectual.
3. An objection made for the first time in the court of appeals that the property sought to be recovered in an action of ejectment is not described with sufficient certainty to enable the plaintiff to recover, cannot prevail, the case having been heard and decided in the court below upon an agreed statement of facts, by which also all errors and informalities in pleading were expressly waived.

**APPEAL** from the Circuit Court for Talbot county.

This was an action of ejectment brought by the appellees against the appellant. The verdict and judgment of the court below were in favor of the plaintiff, and the defendant appealed.

ALVEY, J., delivered the opinion of the court:

This was an action of ejectment, and the case was tried and determined by the court below on an agreed statement of facts.

There is no question made in this court, as we understand, as to the nature and extent of the estate taken by Mary Jane Blades under the will of her mother, nor as to her power to devise the estate so acquired by her. Indeed, it would be difficult to perceive how such question could be made, as by the terms of the will of the mother, the daughter took by clear and unambiguous language a fee simple estate in the land in controversy. The mother died in 1863, and some few months thereafter

her will was duly admitted to probate. In 1872, Mary Jane Blades, the daughter and devisee, married the defendant, William H. Bostick, and died in 1876. She made and left unrevoked a will, executed in due form to pass real estate, and which duly admitted to probate. The will contained the following clause: "I give, devise and bequeath unto my husband, the said William H. Bostick, all my worldly estate, real, personal and mixed, subject to the payment of my said debts, funeral expenses and legacies, to have and to hold to him for and during the term or period after my death, that he shall remain unmarried; and if he shall not marry, then for and during the term of his natural life, but in the event of the marriage of my said husband, after my death, or if he shall not marry, then, upon his death, I give, devise and bequeath all of my said estate to my brother, Stansbury Blades, his heirs and assigns forever."

The husband, the defendant in this action, has remained in possession of the real estate devised by the will of the wife up to the present time; but in the year 1880, he married again, and thereupon this action was brought by Stansbury Blades, the brother and devisee over, to eject the defendant.

In such state of case, the question is, as presented by the agreed statement of facts, whether or not the plaintiff is entitled to recover, under the terms and conditions of the devise by the wife, the husband, the first devisee, having married a second time?

It would seem to be well settled by a great number of adjudications both in England and in this country, that conditions in general restraint of marriage, whether of man or woman, as a general rule, are regarded in law as being against public policy, and therefore void. But this rule has never been considered as extending to special restraints, such as against marriage with a particular person, or before attaining a certain reasonable age, or without consent. Nor has it ever been extended to the case of a second marriage of a woman; but in all such cases the special restraint by condition has been allowed to take effect, and the devise over held good, on breach of the condition. A condition, therefore, that a widow shall not marry, is, by all the authorities held not to be unlawful. *Scott v. Tyler*, 2 Dick, 762; *Jordan v. Holkham, Amb.*, 209; *Barton v. Barton*, 2 Vern., 308; 2 Pow. on Dev., 283; *O'Neale v. Ward*, 3 H. & McH., 93; *Binnerman v. Weaver*, 8 Md., 517; *Gough and Wife v. Manning*, 26 Md., 347; *Clark v. Tonnison*, 33 Md., 85.

In the case a distinction is taken between those where the restraint is made to operate

as a condition precedent, and those where it is expressed to take effect as a condition subsequent; and the decisions have generally been made to turn upon the question, whether there be a gift or devise over or not. But if the gift or devise be to a person until he or she shall marry, and upon such marriage then over, this is a good limitation, as distinguished from condition, as in such case there is nothing to carry the interest beyond the marriage. There can be no doubt, therefore, that marriage may be made the ground of a limitation ceasing or commencing; and this whether the devisee be a man or woman, or other than husband or wife. *Morley v. Renoldson*, 2 Hare, 570; *Webb v. Grace*, 2 Phill., 701; *Arthur v. Cole*, 56 Md., 100.

In this case, if the devise to the husband had depended alone upon the terms of the first part of the devise, that is to say, the terms, "to have and to hold to him for and during the term or period after my death that he shall remain unmarried," there could be no doubt it would have been a good limitation, and the estate devised to him would have terminated upon his second marriage. But we must read the whole clause together, and take one part in connection with the other, and so reading the terms of the devise, the terms that follow those just recited clearly put the devise in the form of a condition subsequent. The estate is given to the husband for life, but in the event of his second marriage, it is devised over to the brother of the testatrix; or, in other words, the devise is to the husband for life, subject to a defeasance in the event of a second marriage. By the terms of this devise, a vested estate passed to the husband for a definite duration, but by the happening of the event that was contemplated as possible, the estate, according to the contention of the plaintiff, became divested and passed over to the plaintiff.

Now, there being no question of the power of a husband to effectually impose such a condition in restraint of a second marriage of his widow, the question here is, whether a wife by a devise or gift to her husband can effectually impose a like condition in restraint of his second marriage?

Upon this precise question the books furnish but little direct authority. In our own reports the nearest case to the present is that of *Waters v. Tazewell*, 9 Md., 291. In that case a deed of leasehold property in trust for the sole and separate use of a *feme covert*, contained a provision that in case the husband should survive the wife, he and his assigns should have the rents and profits "during his natural life only, to and for his own use



and benefit; *provided*, he should continue unmarried after the death of his wife, then living, and from and immediately after his decease," then over. This proviso was held void; but it was because, as stated by the court, that the gift over was not upon the marriage of the husband, but "from and immediately after his decease." As the court said, it was not, in terms, a gift over, based upon the event of a second marriage. "If allowed to limit or reduce the life estate, it would be giving effect to a provision, in reference to personal property, imposing, not a partial, but a general restraint upon marriage, by means, not of a precedent, but of a subsequent condition." That case, therefore, is not an authority to control in determining the present question. It is to be observed, however, that there is no suggestion or intimation by the court that there is, or could be urged, a distinction between the case of a condition as applied to a woman, and a like condition as applied to a man, in restraint of a second marriage.

In the courts of England the direct question here presented does not appear to have arisen until very recently. In 1875 the case of *Allen v. Jackson*, L. R., 19 Eq. Cases, 631, was decided by Vice-Chancellor Hall. In that case, the testatrix gave the income of certain property to her niece (who as her adopted daughter) and the husband of the niece, during their joint lives, and to the survivor during his or her life, with a proviso that if the husband survived his wife and married again, the property should go over. The husband survived the wife and married again; and the Vice-Chancellor held that the attempted defeasance of the husband's life interest was void, as a condition subsequent in restraint of marriage. He said he could not hold the law to be the same as to the second marriage of a man as it is to the second marriage of a woman. That the law as regards the second marriage of a woman is exceptional, and that he did not think he could extend the exception to the case of a man.

That case was taken into the court of appeal (1 Ch. Div., 399), where it was fully argued upon all the principal authorities, before the Lord Justices James, Mellish and Baggally; and upon full consideration, they all concurred in holding that the gift over took effect; and consequently reversed the judgment of the Vice-Chancellor.

Lord Justice James reasoned the matter upon principle; and he said that as there was no statute or expressed decision of any court to the effect, that there is any distinction whatever between the second marriage of a woman

and the second marriage of a man, he was unable to see any principle whatever upon which the distinction could be drawn between them. He then shows to what injustice and hardship the distinction would lead. In the case of a widow, he said, it has been considered to be very right and proper that a man should prevent his widow from marrying again; and after stating the rule he proceeds to show with what reason and force they apply to the case of a gift or devise to a man with condition that he should not marry again. Suppose, he said, "we had the case of a married woman having property which she had power to dispose of by her will, and she left it to her husband by reason of his being the widower, and for the purpose of enabling him to perform his duties properly as the head of the family which she may have left; it would be monstrous to say that when she provided for the contingency of the husband marrying a second time, and having a new wife and a new family, she should not be able to say, 'In that case he is to lose the estate, and it is to go over for the benefit of my children.'" "In this particular case," speaking of the case before him, "it was not the wife who was doing it, but it was a person who places herself in the position of the wife—the wife's mother—and who says, making a provision for her adopted daughter, that she gives her the income of her property for her life, and then gives it, after her death, to her surviving husband, evidently in his character of widower, with a declaration that if he should marry again it should go over to the child of the daughter who was the first object she intended to provide for—a most reasonable and proper provision, with respect to which it seems impossible to suggest that there is any ground of public policy against it."

In the reasoning of Lord Justice Mellish he was equally explicit in holding the condition against the second marriage of the husband valid, and the gift over on breach of the condition effectual. And in the concurring opinion of Justice Baggally, the present state of the English law upon the subject is summed up and stated with admirable clearness. He says: "Now the present state of the law, as regards conditions in restraint of the second marriage of a woman is this, that they are exceptions from the general rule that conditions in restraint of marriage are void, and the enunciation of that law has been gradual. In the first instance, it was confined to the case of the testator being the husband of the widow. In the next place, it was extended to the case of a son making the will in favor of his mother. That, I think, is laid down in

Godolphin's Orphans' Legacy, p. 45. Then came the case before Vice-Chancellor Wood of *Newton v. Marsden*, 2 J. & H., 356, in which it was held to be a general exception by whomsoever the bequest may have been made. Now the only distinction between those cases and the present case is this, that they all had reference to the second marriage of a woman, and this case has reference to the second marriage of a man; but no case has been cited in which a condition has been held to be utterly void as regards the second marriage of a man; and following the analogy of the other cases, there seems no reason at all why a distinction should be drawn between the two sexes as regards this matter. It appears to me that this condition is one which may fairly be treated as valid, and I think so the more for this reason: Here is a gift in favor of a man, which, if he is not deprived of it on the occasion of his second marriage, he may very probably or very possibly settle upon a second wife, and altogether deprive the original family, which was the object of the testatrix's bounty."

We have thus stated somewhat at large the reasoning of that case, because of the entire absence of any direct authority in our own courts; and the conclusion of the Court of Appeal, founded as it is upon such cogent reason, and deduced from the principles of the common law, commends itself strongly to our assent. In the absence of any binding authority to the contrary, we are of opinion that there is no good and substantial ground for maintaining a distinction between a condition imposed in restraint of a second marriage of a woman, and a like condition in restraint of a second marriage of a man. As the one is valid and effectual so is the other; and we therefore hold that the devise over to the plaintiff in this case, on a breach of the condition by the defendant, is valid, and that the plaintiff is entitled to recover.

There is another question raised in this court, and that is, that the property sued for is not described in the declaration with sufficient certainty to entitle the plaintiff to recover. But that question was not raised in the court below, and the case was heard and decided upon an agreed statement of facts. The question not having been raised below cannot be raised in this court for the first time. *American Coal Co. v. County Commissioners of Alleghany County*, 59 Md., 185. Besides, by the agreed statement of facts, all errors and informalities in pleading were expressly waived. That objection, therefore, cannot prevail.

We shall affirm the judgment appealed

from, and direct final judgment to be entered in accordance with the agreed statement upon which the case was tried.

Judgment affirmed.

A FRENCHMAN excused his not remembering a name, saying, "The man had some Irish name you could not spell in French."

A ONE-EYED man was described by a shoemaker, as, "a man with one eye punched."

A BOY who could hear, but not see, some burglars driving away from a house at night, said he "fired two shots of his pistol at the noise."

"DON'T you know where the Devil's half acre is, in Bangor?" said the county attorney to a witness from the country. "I don't know he had a farm here," says the witness.

A SAILOR, who swore he was knocked down and didn't get up for some minutes, in answer to an interrogatory, why he lay there so long, said: "I was overhauling my mind, sir."

## The Courts.

### EQUITY COURT.—Justice James.

APRIL 13, 1883.

*Chase v. Chase*. Trustee directed to pass deeds.  
*Hensey v. Hensey*. Appearance of absent defendant ordered.

*Bury v. Bury*. Committee appointed.

*In re Catherine Femian*, lunatic. Same.

*Young v. Young*. Vacation of decree authorizing bid and reference ordered.

APRIL 14, 1883.

*Yeabower v. Kengla*. Party allowed to intervene as complainant.

*Dodge v. Davis*. Sale ratified nisi.

*Grier v. Hounschild*. Bill dismissed. Appeal noted.

APRIL 16, 1883.

*Craig v. Craig*. Dismissal of bill ordered.

*James v. Gaunon*. Auditor's report ratified.

*Rienhart v. Rienhart*. Testimony before examiner ordered.

*Burnett v. Ellis*. Guardian ad litem appointed.

*Young v. Gale*. Writ of assistance ordered.

*Langley v. Ferry*. Auditor's report confirmed.

*Tucker v. Olsen*. Auditor's report confirmed and trustee directed to pay minor's share.

*Anderson v. Howgate*. Trustee directed to pay money.

*Shoemaker v. Campbell*. Guardian ad litem appointed.

*Evans v. Church*. Injunction denied, &c.

APRIL 17, 1883.

*Bennett v. Ellis*. Substitution of trustee ordered.

*Jost v. Jost*. Auditor's report confirmed, &c.

*Grier v. Homeschild*. Bill dismissed.

*Campbell v. Letcher*. Commission ordered to issue.

Fitzgerald v. Kennedy. Dismissal of bills ordered.

Margarity v. Shipman. Hearing in General Term ordered.

Key v. Murray. Rule on complainant granted.

Kaiser v. Cissell. Reference to auditor.

Lord v. O'Donoghue. Sale by trustee confirmed nisi.

APRIL 18, 1883.

Jackson v. Gales. Resale ordered.

Phillips v. Walbridge. Referred to auditor.

Lord v. O'Donoghue. Sale set aside and money refunded.

Lucas v. Johnson. Guardian ad litem appointed.

Van Hook v. Von Hook. Rule on defendant granted.

Phillips v. Walbridge. Withdrawal of exhibits granted.

Young v. Young. Trustees authorized to accept bid.

Thompson v. Arnold. Order for sale and reference to auditor.

Marks v. Main. Appearance of absent defendant ordered.

APRIL 19, 1883.

Marks v. Main. Decree pro confesso against Douglass made final, &c.

Ketcham v. Georgetown College. Sale ordered and trustee appointed.

Shanahan v. Dayton. Restraining order granted.

Stansbury v. Englehart. Rule on Mrs. Englehart granted.

Oertley v. Oertley. Previous proceeding set aside and leave to amend bill.

Shoemaker v. Campbell. Same.

Murdock v. Fletcher. Rule on certain parties granted.

APRIL 21, 1883.

Shepherd v. Brown. Injunction continued.

Palmer v. Bowers. Pro confesso against certain defendants.

Middleton v. Middleton. Appearance of absent defendant ordered.

Willard v. Willard. Commission to make partition ordered.

Koonen v. Budd. Pro confesso against Cookley and referred to auditor.

Main v. Bonifant. Bill dismissed.

Fitzgerald v. Kennedy. Order dismissing bill vacated.

APRIL 23, 1883.

O'Toole v. Ricks. Guardian ad litem appointed. Garrison v. Garrison. Mrs. Garrison ordered to bring infants into court.

Burch v. Burch. Auditor's report ratified, &c.

Best v. Best. Petition directed to be filed.

Speer v. Coyle. Reference to auditor to report.

Hardell v. Hardell. Divorce a vin mat. granted.

Carrick v. Carrick. Same.

Sibley v. Sibley. Same.

Williams v. Williams. Same.

Wood v. Wood. Same.

APRIL 24, 1883.

Barrand v. Ransome. Conveyance by trustee authorized.

Lucas v. Johnson. Pro confesso against certain defendants.

McCarthy v. O'Hogan. Guardian ad litem appointed.

Oertley v. Oertley. Same.

Shoemaker v. Shoemaker. Appearance of absent defendants ordered.

Van Hook v. Van Hook. Rule discharged. Shoemaker v. Campbell. Guardian ad litem appointed.

APRIL 25, 1883.

Burch v. Burch. Trustees authorized to accept offer.

Gonzaga College v. Carr. Pro confesso against certain parties.

Fitzmorris v. Moran. Testimony ordered taken.

APRIL 26, 1883.

Bettes v. Carrico. Pro confesso against defendants and trustees.

In re Geo. Brent, alleged lunatic. Appearance of Brent ordered.

Neumeyer v. Neumeyer. Auditor's report ratified, &c.

Hubbell v. Hubbell. Complainant ordered to pay counsel fee.

APRIL 27, 1883.

Von Hoake v. Von Hoake. Modification of order ordered.

McArdle v. Cary. Sale ordered and trustee appointed.

Grimes v. Smith. Sale finally ratified.

Yeabower v. Kengla. Administrator allowed to intervene.

Shanahan v. Dayton. Order discharged.

APRIL 28, 1883.

Nat. Capt. Ins. Co. v. Russell. Receiver allowed to appear in suit pending in Connecticut.

Yeabower v. Kengla. Market Co. allowed to intervene.

APRIL 30, 1883.

Nat. Capt. Ins. Co. v. Russell. Order modified.

Westham Granite Co. v. Chandler. Pro confesso against Dunn set aside, &c.

Shoemaker v. Campbell. Guardian ad litem appointed.

Murdock v. Fletcher. Parties enjoined from maintaining suit.

Empire Mill Co. v. Ager et al. Service of process vacated.

Speer v. Coyle. Sale ordered and trustee to sell.

Risdon v. Norton. Commission appointed to make partition.

#### CRIMINAL COURT NO. 2.—Justice Hagner.

MAY 7, 1883.

U. S. v. Joshua Anderson. Convicted of manslaughter. Sentenced to penitentiary for five years.

U. S. v. James White, &c. Indicted for larceny. Motion for new trial overruled. Sentenced to penitentiary for two years.

U. S. v. York Pugh. Indicted for selling liquor without paying special tax. Verdict guilty. Sentenced to imprisonment for 30 days and pay a fine of \$100.

U. S. v. Richard Hill. Indicted for assaulting officer. Verdict guilty. Sentenced to penitentiary for one year.

U. S. v. Nat. Butler, &c., and Edward Johnson. Indicted for house breaking in day. Johnson convicted. Sentenced to penitentiary for three years. Butler nolle prosequi.

U. S. v. Charles Chase. Indicted for house breaking in night. Sentenced to penitentiary for five years.

MAY 10, 1883.

U. S. v. Frank Minor. Convicted of the murder of Victoria Minor. Motion for new trial overruled. Sentenced to be hanged March 7, 1884.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

MAY 22, 1883.  
34499. George T. Jacobs v. John W. Post. Defts atty, W. B. Webb.

MAY 23, 1883.  
34500. Thomas S. Burr v. Charles E. Henry. Replevin. Plffs atty, W. B. Webb.

### IN EQUITY.—New Suits.

MAY 21, 1883.  
8573. Martha P. Days v. William C. Coeten et al. Partition. Com. sols., W. B. Webb and H. E. Elliot.  
8574. Francis Miller et al. v. Margaret Werle et al. To sell. Com. sol., Chas. A. Walter.

MAY 23, 1883.  
8575. Nicholas Weggeman v. Francis A. Weggeman et al. Partition. Com. sol., R. Fendall.  
8576. William Johnson et al. Sarah O. Turney et al. For conveyance. Com. sol., H. B. Moulton.

MAY 24, 1883.  
8577. The First National Bank of New York v. The District of Columbia. For an account. Com. sol., Enoch Totten.

MAY 25, 1883.  
8578. Margaret A. Norment et al. v. James T. Ward et al. To correct title. Com. sol., M. O. Barnard.

MAY 26, 1883.  
8579. John Caldwell v. Oscar E. Hass et al. Dissolution of partnership. Com. sols., Heylman & Kane and J. J. Darlington.

### PROBATE COURT.—Justice James.

MAY 17, 1883.  
Will of Anthony M. Dutch; filed for probate.  
Estate of George Otto; inventory of personal estate returned by executrix.  
In re Harvey L. Maddox, guardian; petition for allowance for ward.

MAY 18, 1883.  
Will of Jacob L. Dorwart; filed and petition for probate and letters.

Estate of George L. Hammeken; petition for citation against administrator to account, ordered.

Estate of John M. Johnson; proof of publication filed. Will admitted to probate and letters granted.

Will of Joseph Reese; fully proved.  
Will of Ellen Thomas; exhibit and proved by second witness and admitted to probate.

Estate of John G. Killian; petition to admit will to probate. Publication ordered.

Estate of Geo. W. Collins; letters granted and administratrix bonded.

Estate of S. Louisa Yeabower; inventory of personalty returned by administrator c. t. a.

Estate of Abby L. Bodfish; proof of publication filed, letters granted and administrator bonded.

Estate of John J. F. Joachim; citation against executors ordered.

Estate of Frank P. Hill; certain claims passed.  
William H. Daw, guardian; petition for maintenance of wards, order allowing same, &c.

Will of Michael Barrett; fully proved and admitted to probate and letters granted, &c.

Estate of John Payne; first account of executrix passed.  
Rachel A. Eliason, guardian; first account passed.

Frank H. Fall, guardian; same.  
James H. Marr, guardian; same.

Olavin O. J. Norris, guardian; second and final account passed.

Mary Sullivan, guardian; same.

MAY 19, 1883.  
In re estate of Alfred F. Pollard; renunciation of one of the executors.

Estate of Mary F. Woods; proof of publication filed. Will admitted to probate and administratrix partially bonded.

Estate of John M. Johnson; administratrix bonded and qualified.

Estate of Mary E. Magruder; administrator c. t. a., partially bonded.

MAY 21, 1883.  
Will of Jennie O'Connor; filed and proved by one witness.

Estate of Geo. N. Hopkins; answer of executor filed.

Estate of Mary E. Magruder executor bonded.

Estate of Chas. B. Boynton; will fully proved.

MAY 23, 1883.  
Estate of Mary F. Woods; executrix bonded and qualified as administrator.

Estate of Richard Henderson; power of attorney from administratrices filed.

Estate of John J. F. Joachim; citation against executors; service acknowledged.

Estate of Eliab Kingman; inventory of personal estate returned by executor.

Estate of Mary B. Marbury; reply to notice on one of the administratrices to account. The attorney to file an answer to the citation against said administratrices.

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WILLIAM E. CLARK }  
v. } No. 5,577. Equity.

ALBINA SEIBERT ET AL.  
Job Barnard, trustee herein, having reported a sale of

block 28; lots No. 1, 2, 3, 4, 5, 6, 7, 8 and 9, in block 29; and part of lot 11, in block 30, fronting 19.37 feet, in Gales street,

and 25 feet on 16th street, all in sub-division of part of "Long Meadows," made by said trustee and others, to

William E. Clark, for \$5,125; and a sale of block 27, in said sub-division, to Felix P. Seibert, for \$6,000:

It is, this 23d day of May, 1883, ordered, that said sales be confirmed on the 23d day of June, 1883, unless good cause to the contrary be shown. Provided, a copy of this order be published in the Washington Law Reporter for three

successive weeks before that day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: R. J. Meigs, Clerk.

EDWARDS & BARNARD, Solicitors. 21-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. May 18, 1883.

In the matter of the Will of Jacob L. Dorwart, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan D. Dorwart.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of June, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

VOORHEES & SINGLETON, Solicitors. 21-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. May 18, 1883.

In the matter of the Will of John G. Killian, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Mary M. Killian, who also prays that Letters of Administration, c. t. a., may be granted to some suitable person.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

E. A. NEWMAN, Solicitor. 21-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. May 25, 1883.

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Magee and Laura Magee.

All persons interested are hereby notified to appear in this Court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

E. A. NEWMAN, Solicitor. 21-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. May 25, 1883.

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Magee and Laura Magee.

All persons interested are hereby notified to appear in this Court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

E. A. NEWMAN, Solicitor. 21-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, May 23, 1883.**

CATHERINE OURAND

V. GEORGE E. OURAND ET AL.

No. 8428. Eq. Doc. 22.

The trustee in this cause having reported the sale of lot 80, in Turtens' sub-division of part of square 180, for the sum of \$3,200, it is, this 23d day of May, 1883, ordered, that the said sale be ratified and confirmed unless objections thereto be filed herein on or before the 23d day of June 1883. Provided, a copy of this order be published in the Washington Law Reporter once, a week for three weeks prior to the said last-mentioned date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 21-3 R. J. Meigs, Clerk.

**CHANCERY SALE OF VALUABLE IMPROVED**  
real estate in the city of Washington, being premises No. 1313 New York Ave., n. w.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 22d day of May, 1883, and an amended decree passed on the 23d day of May, 1883, in equity cause 8681, we shall sell, at public auction, in front of the premises, on MONDAY, the 4th day of June, 1883, at 5 o'clock, p. m., all that certain piece or parcel of ground, lying and being in the city of Washington, District of Columbia, and distinguished on the ground plan thereof as lot 2, in Davidson's recorded subdivision of square 251. The same being improved by a large three-story brick dwelling. Terms of sale, as prescribed by said decree: one-fourth cash, residue in three equal instalments, at one, two and three years respectively from day of sale, with interest at the rate of five per cent. per annum, to be secured by deed of trust upon the property sold; or all cash, at option of purchaser. A deposit of \$500 required of purchaser at time of sale. All conveyancing at purchaser's cost.

The trustees reserve the right to re-advertise and sell the property at defaulting purchaser's cost and risk if terms are not complied with in ten days.

CHARLES H. ORAGIN, Jr. Trustee,  
Office: 321 Ffour-and-a-half-street, n. w.

WILLIAM A. GORDON, Trustee,  
Office: 330 Four-and-a-half-street, n. w.

21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Mary E. Magruder, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

WILLIAM A. GORDON,  
Administrator c. t. a.

21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John M. Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883

MARY VIRGINIA WELLS, 942 K street, n. w.  
GEO. F. APPELBY, Solicitor. 21-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN THOMPSON ET AL.

V.

THOMAS ARNOLD ET AL.

No. 1,028. Equity.

Wm. F. Mattingly, trustee, having reported that he sold on May 1, 1883, at public auction, said part of sub-lot No. 22, in square 197, described in this cause, to John Ourtie, at 75 cents per square foot, it is this 24th day of May, A. D. 1883, ordered, that said sale be finally ratified and confirmed on the 18th day of June, 1883, unless cause to the contrary be shown before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 21-3 R. J. Meigs, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary F. Woods, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

21-3 ELIZABETH M. WOODS, 1017 O st., s. w.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, May 10, 1883.**

CHARLES A. CRAIG

V. WILLIAM T. CRAIG ET AL.

No. 8302. Eq. Doc. 22.

The trustee in this cause having reported that on Monday, the 7th day of May, 1883, he sold to Mr. A. H. Herr, that part of lot 126, in Beatty & Hawkins' addition to Georgetown described in the bill in this cause, for the price of \$1,200, ordered, this 10th day of May, 1883, that said sale be ratified and confirmed unless cause to the contrary be shown the 12th day of June, next. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said day.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 20-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Moses Ogle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1883.

18-3 SAM'L R. BOND, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louise Joachim, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of May, 1883.

MICHAEL JOACHIM, Executor.  
F. H. MACKBY, Solicitor. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of May, 1883.**

AUGUSTUS S. WORTHINGTON ET AL.

V.

GEORGE O. RANDALL ET AL.

No. 8493. Eq. Doc. 22.

On motion of the plaintiffs, by Messrs. Worthington and Hagner, their solicitors, it is ordered that the defendant, George O. Randall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Probate Business.**

In re estate of Virginia Tayloe, deceased.

Upon hearing the petition this day filed of Virginia Tayloe Lewis, to propound the Will and Testament of said deceased, and that Administration be granted on said estate with the will annexed, it is, this 14th day of May, A. D. 1883, ordered, that the prayer of said petition to admit the Will to Probate and Record and that Administration be granted to her, said Virginia T. Lewis, unless cause be shown to the contrary on or before the 16th day of June next. Provided, that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: H. J. RAMSDELL,  
Register of Wills, D. C.

JESSE MILLER, Proctor.  
May 16th, A. D. 1883.

20-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ellab Kingman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.

WILLIAM W. BOYCE,  
ABNER KINGMAN,

Executors.

20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Loyal Cowles, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

ISRAEL L. TOWNSEND, Administrator.

CRITTENDEN & MACKAY, Solicitors. 20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann Phillips, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1883.

MRS. JANE LYNCH, Administratrix.

HANNA & JOHNSTON, Solicitors. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.** Holding a Special Term for Orphans' Court Business. May 11, 1883.

In the case of Hudson Taylor, Executor, of Anna Lindsey, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of June, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

PETER HULME, Solicitor. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 15th day of May, 1883.

DANIEL MASON

No. 3,568. Eq. Doc. No. 23.

RACHEL MASON ET AL.

On motion of the plaintiff, by Messrs. Carusi & Miller, his solicitors, it is ordered that the defendants, William Mason and David Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. CHARLES P. JAMES, Justice.

True copy. Test: 20-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 15th day of May, 1883.

WILLIAM DUVAL

No. 5567. Eq. Doc. No. 23.

ANN DUVAL MITCHELL ET ALIAS

On motion of the plaintiff, by Mr. William A. Meloy, his solicitor, it is ordered that the defendants, Ann D. Mitchell, Mary J. Boone, Henry O. Boone, Julia A. Anderson, Geo. W. Anderson, Wm. H. Vermillion, Harriet Ferguson, Agnes Norfolk, Geo. P. Norfolk, Alice Cranford, Thomas Cranford, Jeremiah Sweeney and John Thomas Sweeney, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.

A true copy. Test: 20-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles A. Watts, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1883.

19-3 MARTIN F. MORRIS, 1306 F Street, a. w.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Hervey King, late of Portsmouth, Virginia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

MARY P. KING, Administratrix.

THOS. H. CALLAN, Solicitor. 19-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1883.

MARY M. HUGH, Administratrix.

B. H. WEBB, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** holding a Special Term for Orphan's Court Business. May 8, 1883.

In the case of William A. Gordon, Administrator of John B. Blake, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 8th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** holding a Special Term for Orphans' Court Business. May 8, 1883.

In the case of George E. Hamilton, Administrator of Thomas T. O'Leary, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 1st day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 19-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 9th day of May, 1883.

CASSIMER BOHN

No. 5539. Eq. Doc. No. 23.

JOHN FOY ET AL.

On motion of the plaintiff, by Mr. James McD. Carrington, his solicitor, it is ordered that the defendants, John Foy, James O. Foy, John M. Foy, Samuel C. Foy and heirs unknown of John Foy, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.

True copy. 19-3 Test: R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rachel W. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

GEO. A. BARTLETT, Administrator.  
CHAPIN BROWN, Solicitor. 19-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Sarah Hammond, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

19-3 EDWARD H. THOMAS.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Duvall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.

WILLIAM DUVAL,  
WILLIAM G. GREEN,  
Administrators. 19-3  
WM. A. MELOY, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Isaac Delano, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1883.

JAMES S. DELANO, Administrator.  
F. P. CUFFY, Solicitor. 19-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

VIRGINIA F. PAYNE ET AL.

Y. } Eq. No. 8,336. Doc. 22.

EDWARD H. THOMAS and GLEN W. COOPER, trustees, paying reported that they have sold original lot 13, in square 16, to WILLIAM T. and CHARLES B. T. PAYNE, at and for the sum of \$7,100; it is, by the court this fourth day of May, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the fifth day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last named day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 18-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of May, 1883.**

HERMAN COPPERMAN

V. } No. 24,412. At Law.

HEIMAN KURZMAN.  
On motion of the plaintiff, by Mr. Garnett, his attorney, it is ordered that the defendant, Heiman Kurzman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. MAO ARTHUR, Justice.  
True copy. Test: 18-3 R. J. MEIGS, Clerk, &c.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

YOUNG ET AL.

V. } Equity. No. 7,771.

YOUNG ET AL.

Charles Walter, the trustee in this cause having reported to the court that he has sold to Horace K. Fulton, the real estate mentioned in the proceedings in this cause, viz.: lots lettered "F" and "G" in Colman's sub-division of lots four, five, six and seven, in square numbered two hundred and forty-five, in the city of Washington and District of Columbia, at and for the sum of eight thousand and five hundred dollars cash, and that said Fulton has fully complied with the terms of sale:

It is, thereupon by the court this 9th day of May A. D. 1883, ordered, adjudged and decreed that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the eleventh day of June, 1883. Provided, a copy of this order be published once in each week for three successive weeks in the Washington Law Reporter prior to said eleventh day of June, 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 19-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the case of Daniel W. Middleton, Jr., Administrator of Jacob W. Ker, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of June, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 17-3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 24th day of April, 1883.**

FRANCIS D. SHOEMAKER ET AL.

V. } No. 8,081. Eq. Dec. 22.

EDWARD SHOEMAKER ET AL.

On motion of the plaintiffs, by Mr. Oragin, their solicitor, it is ordered that the defendants, Edward Lukens, Lewis A. Lukens, Mary T. Lukens, David Lukens, Ellen Lukens, Mary Lukens, Margaret A. Smedley, Albin M. Smedley and Mary E. Fowler, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. Test: 17-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 26th day of April, 1883.**

IN RE THE ALLEGED LUNACY

} No. 8484. Equity Docket.

OF GEORGE BRENT.

On motion of the petitioner, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the said George Brent, the alleged lunatic, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
A true copy. Test: 17-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. April 24, 1883.**

In the matter of the Estate of Mary F. Woods, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Elizabeth M. Woods.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.  
Test: 17-3 H. J. RAMSDALL, Register of Wills.



# Washington Law Reporter

WASHINGTON - - - - - June 2, 1883.

GEORGE B. CORKHILL - - - EDITOR

## New Rules of Practice.

The Secretary of the Interior, has formulated the following rules of practice governing appeals from the Commissioner of Patents:

1. Appeals from the action of the Commissioner of Patents in uncontested cases where the construction of the rules of practice is involved, and in contested cases will not be entertained by the Secretary of the Interior unless the petition therefor be filed with the Commissioner of Patents within ten days after the date of the action to which it relates.

2. Upon receipt of the appeal the Commissioner will make a report to the Secretary embodying the material facts of the case and the grounds of his action therein on referring to such of the papers in the case as set forth such facts and action. He will also notify the appellant that his report has been submitted to the Secretary. Upon a proper showing by a party in interest that the report of the Commissioner is deficient as to material facts, the Secretary will call upon the Commissioner for a further report.

3. Within twenty days after the receipt of the papers by the Secretary the appellant shall file a printed brief with the Secretary, and in contested cases the written acknowledgment of the appellee that he has been furnished with a copy of the appellant's brief, showing the date it was received.

4. The appellee, or any party opposing the appeal to the Secretary, may, within twenty days after receipt of the appellant's brief, file a printed brief in reply.

5. No oral hearing will be allowed until the rule relating to the filing of printed briefs is complied with, and then only on the suggestion of the Secretary that he desires to hear the parties.

6. Where "appeal" is mentioned in these rules, it refers to both an appeal in its ordinary sense in a case at law and an application for the exercise of the Secretary's supervisory authority.

# Supreme Court District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKENZIE.

JONATHAN MAGARITY

vs.

JOHN J. SHIPMAN.

EQUITY. No. 7746.

{ Decided May 7, 1883.

{ The CHIEF-JUSTICE and Justices HAGNER and COX sitting.

1. If the failure of one of the parties to a contract be but partial, leaving a distinct part as a subsisting and executed consideration, and leaving also to the other party his action for damages for the part not performed, the latter cannot treat the contract as rescinded unless both are returned to the condition in which they were before the contract was made.
2. S., having contracted to build certain dykes, forms a partnership with M., who agrees with S, to do a portion of the work, M. partially performs his portion and then discontinues, whereupon S. enters into a new and different contract with M. in regard to the completion of the same work: *Held*, that this new contract was a substitute for and settlement of all that had preceded it and that S. could not thereafter recover for any loss or damage occasioned by M.'s failure to carry out his first contract.
3. Where M. for a share of the profits, agrees to furnish S. with the means to enable him to perform certain work and partially fails, the remedy is at law and the measure of damages is the increased cost to which S. has been subjected by such failure.
4. If, on the other hand, M. was justified in ceasing to furnish the means because of some breach of the contract on the part of S., while he may not claim a share of the profits, *qua profits*, he may have his action for damages.
5. In all the instances above given the remedy is at law and not in equity.

This was a bill and cross-bill for discovery and account.

The CASE is sufficiently stated in the opinion.

ROBERT CHRISTY for plaintiff.

W. WILLOUGHBY for defendant.

Mr. Justice COX delivered the opinion of the court.

This case has the appearance, at first, of great complication. It grows out of certain contracts between Shipman, originally, with the United States for the construction of dikes on the Ohio river, and it also grows out of some four or five contracts made between Shipman and Magarity. But when we come to sift the facts, we find there is really no complication in the case at all, and that it is very simple. The facts are as follows:



Shipman, having a contract with the United States for the construction of two crib dikes on the Ohio river—one on the Ohio and one on the Kentucky side—took Magarity and Hoover into partnership with him on the terms that they should furnish security and money to enable him to execute his contract, and in consideration thereof should receive one-tenth of the profits.

This agreement was made July 24, 1879. Work proceeded under it until the fall, during which time the dike on the Ohio side had been nearly completed, but no work was done on the Kentucky side. Disagreement arose between the parties, and a new contract was made, first verbally, and afterwards reduced to writing on February 28, 1880, according to which Shipman was to complete the dike on the Ohio side and receive all the profits on that part of the work as his share of the profits of the partnership, and Magarity was to complete the dike on the Kentucky side and receive all the profits on that as his share of the entire partnership profits. Shipman was also to execute to Magarity a full power of attorney to draw all funds to become due on account of this contract.

But on April 29, 1880, still another agreement was made, according to which Magarity assumed to finish the whole work on both sides of the river, and was to receive all the profits to arise from such work, and Shipman agreed to enlarge his power of attorney so as to enable him to draw all moneys for the entire work. By this agreement Shipman went out of the partnership, and ceased to have any interest in the work except in having it completed so as to relieve him from liability on his contract with the United States. Magarity's only contract with him was to finish the work for the United States. He occupied the position of a public contractor. Magarity partially executed the work, but failed to complete it according to agreement.

It is obvious that this threw upon Shipman the burden of employing some one else to complete it or of doing it himself. And the natural and proximate damage that would result to Shipman from Magarity's failure to perform, would be the cost to him of having the work so completed.

But instead of proceeding independently to protect himself from loss by going on with the work, he entered into a new agreement with Magarity on the 16th of October, 1880, by which he undertook to do the work which Magarity had agreed to do, in consideration of one-third of the profits to be received from the contract, Magarity agreeing to furnish the

money and appliances necessary for the vigorous prosecution of the work.

It seems to be very clear that this contract was a substitute for and a settlement of all that had preceded, and that if it had been faithfully performed by Magarity, Shipman would have had no claim against him upon any of the antecedent agreements, even if no profit should be realized from the work. Supposing Magarity to fail in the execution of this agreement, what was Shipman's proper remedy? If, with Magarity's aid in money and material, as contracted for, the work could be finished at a cost which would leave a certain margin of profit in the contract price to be paid by the United States, and in consequence of Magarity's failure to supply the promised facilities, the cost of the work was increased to Shipman, so as to lessen or extinguish the profit, this increased cost was a damage to Shipman, and furnished him a cause of action against Magarity.

But the argument for the defense has proceeded upon an entirely different theory. It is claimed that when Magarity failed to perform fully his agreement of April 29, 1880, to complete all the unfinished work, Shipman had the right to ignore that agreement and all rights of Magarity under it, entirely; to treat it as if it had never been made, and to deal with Magarity simply as a trustee or agent receiving and disbursing money on Shipman's account, and bound to account for the surplus of his receipts above disbursements. And while it is admitted that this relation between them and this right of ignoring the contract of April, 1880, were *temporarily* changed and suspended by the agreement of October 16, 1880, and would have been permanently so if that had been carried out, it is contended that since this last agreement was also itself violated, this in turn may be disregarded and the parties treated as relegated to their rights and relations which antedated it. In other words, it is claimed that both agreements of April and October, 1880, having been broken by Magarity, Shipman is entitled to treat them both as rescinded, and hold him accountable accordingly. It does not seem very clear what advantage the defendant would derive from this, for if these two agreements are rescinded the effect would be to revive the former one of February 28, 1880, which entitled Magarity to complete the Kentucky dike and to take all the profits of such work. But in fact this view of defendant's counsel, which seems to have been adopted by the auditor, ignores a vital principle in the law of contracts, which may be stated in the language of Parson, Vol. II, p.

678, that a person may not treat a contract as rescinded "if the failure of the other party be but partial, leaving a distinct part as a subsisting and executed consideration, and leaving also to the other party his action for damages for the part not performed. Generally, no contract can be rescinded by one of the parties unless both can be restored to the condition in which they were before the contract was made. If, therefore, one of the parties has derived an advantage from a partial performance, or so disposed of property bought that he cannot restore it, he cannot hold this and consider the contract as rescinded because of the non-performance of the residue."

Now, it is conceded that a considerable part of the work stipulated by the agreement of April, 1880, was performed by Magarity and enured to the benefit of Shipman in his contract with the United States. And Shipman neither could, nor, if he could, did he offer to restore the value of that to Magarity, and without that he had no right to rescind. The same remarks apply to the last contract of October 16, 1880.

Instead of simply suing Magarity for not going on to complete the work, or of proceeding on his own account to finish it, and then suing Magarity for the cost, Shipman adjusted all unsettled matters by a new agreement under which, for what he deemed an adequate consideration, he assumed Magarity's obligation to finish the work, and thus released the latter from any liability for not doing it. Instead of even attempting to *rescind* the former contract, he released and discharged it. The consideration of his new undertaking was Magarity's agreement to continue to advance means and appliances for the execution of the work, and to allow Shipman one-third of the profits.

It is conceded that Magarity did supply the necessary means with which the work was prosecuted until the working season of that year closed. He refused to proceed further for reasons appearing in the record. But it was too late then for Shipman to rescind the last agreement, because he had received the benefit of a partial performance, and all that he is entitled to is to recover the damages he has sustained by this last breach of contract, which, as already stated, would be determined in part or wholly by the increase occasioned in the expense of completing the work by Magarity's failure.

He is not entitled to go back and have an account taken of anything done before October, 1880, or to claim, as he does, for the decrease on the value of the contract with the

United States at that time, in consequence of Magarity's previous failure. For at that time he had no interest whatever in the profits of the contract, and he then, with his eyes open, voluntarily accepted a share of the *contingent* profit as a full reward for his undertaking to finish the work. Neither, for the same reasons, is he entitled to an allowance for the time consumed by him in finishing the work, for he agreed to take the chance of profit in full for his time and labor.

The conclusion we have come to is, that if either one of these parties has a cause of action against the other, it is a legal cause of action. If Shipman has a right to recover against Magarity, it is a matter very easily liquidated. It is a claim for damages by a contract that was measured by the increased cost to which he was subjected by Magarity's failure to furnish means. If Magarity, on the other hand, had furnished the promised facilities in the shape of material and other things, then perhaps he might, in a court of equity, be entitled to call upon Shipman by a bill for discovery and account of profits. But inasmuch as he did not, but ceased in the middle of the work to furnish these means, he has no right to claim part of the profits *qua* profits. If he was justified in so stopping, by some breach of the contract on the other side, he may have his action of damages therefor.

The conclusion of the court therefore is that both bills be dismissed without prejudice to the rights of these parties to proceed at common law.

ACCORD AND SATISFACTION — PERFORMANCE.—Where the payee of a note agrees with the maker to accept something else in payment, the maker must, in order to defeat a suit on the note, show that he performed the agreement on his part. The maker may tender the thing agreed to be accepted, and if it be refused may set it apart for the other party and have it at his price. Or, having made the tender, and done all that was required of him, he may retain the property ready to be delivered at any time. In this case the appellee did not indorse the note which appellant had agreed to accept, and thus did not execute the accord to a point where it was to operate as a satisfaction of his liability on the note sued on.—*Sup. Ct. of Ind.*

AFTER the rendition of the verdict it is too late to object on the ground of the want of proper age of a juror, or of the party's previous ignorance of the fact. *Johns v. Hodges*; 10 Md. L. Rec. No. 12.

## United States Supreme Court.

No. 273.—OCTOBER TERM, 1882.

THE DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

CHARLES H. ARMS, Administrator of E. W. DU BOSE, deceased.

*In Error to the Supreme Court of the District of Columbia.*

1. A lunatic or insane person may, from the condition of his mind, not be a competent witness, and the question of his incompetency on that ground, like incompetency from any other cause, must be passed upon by the court, to aid the judgment of which, evidence of his condition is admissible: but lunacy or insanity assumes so many forms that the power of the court should be exercised with the greatest caution.
2. In an action to recover damages for injuries received from a fall on a defective sidewalk, evidence of other accidents at the same place is admissible as tending to show the dangerous character of the sidewalk, and that it was brought to the attention of the authorities. The character of the place being one of the subjects of inquiry to which the attention of the defendant is called by the nature of the return and the pleadings, it should be prepared to show the real character of the place, in the face of any proof bearing on the subject.—ED. LAW REP.

Mr. Justice FIELD delivered the opinion of the court.

This was an action to recover damages for injuries received by the plaintiff's intestate, Du Bose, from a fall caused by a defective sidewalk in the city of Washington. In 1873, the Board of Public Works of the city caused the grade of the carriageway of Thirteenth street, between F and G streets, to be lowered several feet. The distance between the curbstone of the carriageway and the line of the adjacent buildings was thirty-six feet. At the time the accident to the deceased occurred, this portion of the street—sidewalk it may be termed to designate it from the carriageway, although only a part of it is given up to foot passengers—was, for forty-eight feet north of F street, lowered in its whole width to the same grade as the carriageway. But, for some distance beyond that point, only twelve feet of the sidewalk was cut down, thus leaving an abrupt descent of about two feet at a distance of twelve feet from the curb. At this descent—from the elevated to the lowered part of the sidewalk—there were three steps, but the place was not guarded either at its side or end. Nothing was placed to warn foot passengers of the danger.

On the night of February 21, 1877, Du Bose, a contract surgeon of the United States army,

while walking down Thirteenth street, towards F street, fell down this descent, and, striking upon his knees, received a concussion which injured his spine and produced partial paralysis, resulting in the impairment of his mind and ultimately in his death, which occurred since the trial below.

The present action was for the injury thus sustained. He was himself a witness, and it appeared from his testimony that his mind was feeble. His statement was not always as direct and clear as would be expected from a man in the full vigor of his mind. Still it was not incoherent, nor unintelligible, but evinced a full knowledge of the matters in relation to which he was testifying. A physician of the Government Hospital for the Insane, to which the deceased was taken two years afterwards, testified that he was affected with acute melancholy; that sometimes it was impossible to get a word from him; that his memory was impaired, but that he was able to make a substantially correct statement of facts which transpired before the injury took place, though, from the impairment of his memory, he might leave out some important part, that there would be some confusion of ideas in his mind, and that he should not be held responsible for any criminal act. A physician of the Freedmen's Hospital, in which the deceased was at one time a patient after his injuries, testified to a more deranged condition of his mind, and that he was, when there in June, 1879, insane. He had attempted to commit suicide, and had stuck a fork into his neck several times. Upon this, and other testimony of similar import, and the feebleness exhibited by the deceased on the stand, the counsel for the city requested the court to withdraw his testimony from the jury, on the ground that his mental faculties were so far impaired as to render him incompetent to testify as a witness. This the court refused to do, but instructed the jury that his testimony must be taken with some allowance, considering his condition of mind and his incapacity to remember all the circumstances which might throw some light on his present condition. This refusal and ruling of the court constitute the first error assigned.

The ruling of the court and its instruction to the jury were entirely correct. It is undoubtedly true that a lunatic or insane person may, from the condition of his mind, not be a competent witness. His incompetency on that ground, like incompetency for any other cause, must be passed upon by the court, and to aid its judgment, evidence of his condition is admissible. But lunacy or insanity assumes so many forms, and is so

often partial in its extent, being frequently confined to particular subjects, whilst there is full intelligence on others, that the power of the court is to be exercised with the greatest caution. The books are full of cases where persons showing mental derangement on some subjects evince a high degree of intelligence and wisdom on others. The existence of partial insanity does not unfit individuals so affected for the transaction of business on all subjects, nor from giving a perfectly accurate and lucid statement of what they have seen or heard. In a case in the Prerogative Court of Canterbury, counsel stated that partial insanity was unknown to the law of England; but the court replied that if by this was meant that the law never deems a person both sane and insane at one and the same time upon one and the same subject, the assertion was a truism; and added: "If, by that position, it be meant and intended that the law of England never deems a party both sane and insane at different times upon the same subject, and both sane and insane at the same time upon different subjects, there can scarcely be a position more destitute of legal foundation, or rather there can scarcely be one more adverse to the stream and current of legal authority." (*Dew v. Clark*, 3d Addams Eccl. R., 79, 94.)

The general rule, therefore, is, that a lunatic or a person affected with insanity is admissible as a witness if he have sufficient understanding to apprehend the obligation of an oath, and to be capable of giving a correct account of the matters which he has seen or heard in reference to the questions at issue; and whether he have that understanding is a question to be determined by the court, upon examination of the party himself, and any competent witnesses who can speak to the nature and extent of his insanity. Such was the decision of the Court of Criminal Appeal in England, in the case of *Regina v. Hill*, (5th Cox's Criminal Cases, 259.) There the prisoner had been convicted of manslaughter; and on the trial a witness had been admitted whose incompetency was urged on the ground of alleged insanity. He was a patient in a lunatic asylum, under the delusion that he had a number of spirits about him which were continually talking to him, but the medical superintendent testified that he was capable of giving an account of any transaction that happened before his eyes; that he had always found him so; and that it was solely with reference to the delusion about the spirits that he considered him a lunatic. The witness himself was called, and he testified as follows: "I am fully aware I have a spirit, and twenty

thousand of them. They are not all mine. I must inquire. I can where I am. I know which are mine. Those that ascend from my stomach and my head, and also those in my ears. I don't know how many they are. The flesh creates spirits by the palpitation of the nerves and the rheumatics. All are now in my body and around my head. They speak to me incessantly, particularly at night. That spirits are immortal, I am taught by my religion from my childhood. No matter how faith goes, all live after my death, those that belong to me and those that do not." After much more of this kind of talk he added: "They speak to me instantly; they are speaking to me now; they are not separate from me; they are around me speaking to me now; but I can't be a spirit, for I am flesh and blood. They can go in and out through walls and places which I cannot." He also stated his opinion of what it was to take an oath: "When I swear," he said, "I appeal to the Almighty. It is perjury, the breaking of a lawful oath, or taking an unlawful one; he that does it will go to hell for all eternity." He was then sworn, and gave a perfectly-collected and rational account of a transaction which he declared that he had witnessed. He was in some doubt as to the day of the week on which it took place, and on cross-examination said: "These creatures insist upon it, it was Tuesday night, and I think it was Monday;" whereupon he was asked: "Is what you have told us what the spirits told you, or what you recollected without the spirits?" And he said: "No; the spirits assist me in speaking of the date, I thought it was Monday and they told me it was Christmas eve, Tuesday; but I was an eye-witness, an ocular witness to the fall to the ground." The question was reserved for the opinion of the court whether this witness was competent, and after a very elaborate discussion of the subject, it was held that he was. Chief-justice Campbell said that he entertained no doubt that the rule laid down by Baron Parke, in an unreported case which had been referred to, was correct, that wherever a delusion of an insane character exists in any person who is called as a witness, it is for the judge to determine whether the person so called has a sufficient sense of religion in his mind and a sufficient understanding of the nature of an oath, and it is for the jury to decide what amount of credit they will give to his testimony.

"Various authorities," said the chief-justice, "have been referred to, which lay down the law that a person *non compos mentis* is not an admissible witness; but in what sense is the

expression *non compos mentis* employed? If a person be so to such an extent as not to understand the nature of an oath, he is not admissible. But a person subject to a considerable amount of insane delusion may yet be under the sanction of an oath and capable of giving very material evidence upon the subject-matter under consideration." And the chief-justice added: "The proper test must always be, does the lunatic understand what he is saying; and does he understand the obligation of an oath? The lunatic may be examined himself, that his state of mind may be discovered, and witnesses may be adduced to show in what state of sanity or insanity he actually is; still, if he can stand the test proposed, the jury must determine all the rest." He also observed that in a lunatic asylum the patients are often the only witnesses of outrages upon themselves and others, and there would be impunity for offences committed in such places if the only persons who can give information are not to be heard. Baron Alderson, Justice Coleridge, Baron Platt, and Justice Talfourd, agreed with the chief-justice, the latter observing that, "If the proposition that a person suffering under an insane delusion cannot be a witness were maintained to the fullest extent, every man subject to the most innocent, unreal fancy would be excluded. Martin Luther believed that he had a personal conflict with the devil. Dr. Johnson was persuaded that he had heard his mother speak to him after death. In every case the judge must determine according to the circumstances and extent of the delusion. Unless judgment and discrimination be applied to each particular case there may be the most disastrous consequences." This case is also found in the 2d of Denison and Pearce's Crown Cases, 254, where Lord Campbell is reported to have said that the rule contended for would have excluded the testimony of Socrates, for he had one spirit always prompting him. The doctrine of this decision has not been overruled, that we are aware of, and it entirely disposes of the question raised here.

On the trial, a member of the Metropolitan police, who saw the deceased fall on the sidewalk and went to his assistance, was asked, after testifying to the accident, whether, while he was on his beat, other accidents had happened at that place. The court allowed the question against the objection of the city's counsel, for the purpose of showing the condition of the street, and the liability of other persons to fall there. The witness answered that he had seen persons stumble over there. He remembered sending home in a hack a

woman who had fallen there, and had seen as many as five persons fall there.

The admission of this testimony is now urged as error, the point of the objection being that it tended to introduce collateral issues and thus mislead the jury from the matter directly in controversy. Were such the case the objection would be tenable, but no dispute was made as to these accidents, no question was raised as to the extent of the injuries received, no point was made upon them, no recovery was sought by reason of them, nor any increase of damages. They were proved simply as circumstances which, with other evidence, tended to show the dangerous character of the sidewalk in its unguarded condition. The frequency of accidents at a particular place would seem to be good evidence of its dangerous character—at least, it is some evidence to that effect. Persons are not wont to seek such places, and do not willingly fall into them. Here the character of the place was one of the subjects of inquiry to which the attention of the defendant was called by the nature of the action and the pleadings, and it should have been prepared to show its real character in the face of any proof bearing on that subject.

Besides this, as publicity was necessarily given to the accidents, they also tended to show that the dangerous character of the locality was brought to the attention of the city authorities.

In *Quinlan against the City of Utica*, 11 Hun., which was before the Supreme Court of New York, in an action to recover damages for injuries sustained by the plaintiff through the neglect of the city to repair its sidewalk, he was allowed to show that while it was out of repair other persons had slipped and fallen on the walk where he was injured. It was objected that the testimony presented new issues which the defendant could not be prepared to meet, but the court said: "In one sense every item of testimony material to the main issue introduces a new issue; that is to say, it calls for a reply. In no other sense did the testimony in question make a new issue. Its only importance was that it bore upon the main issue, and all legitimate testimony bearing upon that issue, the defendant was required to be prepared for." This case was affirmed by the Court of Appeals of New York, all the judges concurring, except one, who was absent. (74 N. Y., 603).

In an action against the city of Chicago, to recover damages resulting from the death of a person who in the night stepped off an approach to a bridge while it was swinging around to enable a vessel to pass and was

drowned—it being alleged that the accident happened by reason of the neglect of the city to supply sufficient lights to enable persons to avoid such dangers—the Supreme Court of Illinois held that it was competent for the plaintiff to prove that another person had, under the same circumstances, met with a similar accident. (*City of Chicago v. Powers*, 42 Ill., 168). To the objection that the evidence was inadmissible, the court said: "The action was based upon the negligence of the city in failing to keep the bridge properly lighted. If another person had met with a similar fate at the same place and from a like cause, it would tend to show a knowledge on the part of the city that there was inattention on the part of their agents having charge of the bridge, and that they had failed to provide proper means for the protection of persons crossing on the bridge. As it tended to prove this fact it was admissible; and if the appellants had desired to guard against its improper application by the jury, they should have asked an instruction limiting it to its legitimate purpose."

Other cases to the same general purport might be cited. See *Augusta v. Hafees*, 61 Geo., 48; *House v. Metcalf*, 27 Conn., 630; *Calkins v. Hartford*, 33 Ib., 57; *Darling v. Westmoreland*, 52 N. H., 401; *Hill v. Portland & Rochester R. R. Co.*, 55 Maine, 439; *Kent v. Lincoln*, 32 Vermont, 591; *City of Delphi v. Lowery*, 74 Ind., 520. The above, however, are sufficient to sustain the action of the court below in admitting the testimony, to which objection was taken.

Judgment affirmed.

*Supreme Court of Pennsylvania.*

THE CITY OF ERIE vs. MAGILL.

Plaintiff sustained her injury in the day time by slipping and falling on a ridge of ice and snow extending across the sidewalk from the building line into the street; it was three to four feet high on the inside line, then gradually sloping down. *Held*, that as she knew the dangerous character of this obstruction, and could have avoided it by going out into the street, it was contributory negligence, and the court below should have directed the jury to find for the defendant.

Error to the Court of Common Pleas of Erie county.

Opinion by GREEN, J. Filed December 30, 1882.

But a single question is presented by this case. It is, whether, upon the undisputed evidence, the plaintiff contributed by her own negligence to the injury she sustained. The learned judge of the court below charged the jury, that "whatever may have been the con-

dition of the street, or however dangerous, if the plaintiff knew of such danger, and could have avoided it by turning aside, or by going on the opposite side of the street, but, instead of doing so, chose to run the risk of passing over the dangerous spot, and so encountered the hurt and injury complained of, she would be guilty of what is called in the law contributory negligence, and your verdict should be for the defendant." That this was a correct statement of the law applicable to the case cannot be doubted, and is not questioned by the learned counsel for the plaintiff. The counsel for the city asked the court to instruct the jury that, under all the evidence, the verdict must be for the defendant. This the court declined to do, but left to the jury the question of the plaintiff's knowledge of the condition of the street on the day of the accident, and her ability to avoid it, thus: "The question is for you. What is the fact? Did she know of its condition on that day, and could she have avoided it? If so, she cannot recover." This action of the court constitutes the subject of the only assignment of error on the record." After a patient examination of all the testimony in the case, we have reached the conclusion that the defendant's seventh point should have been affirmed, and a verdict for the defendant directed.

The plaintiff sustained her injury by slipping and falling upon a ridge of ice and snow extending across the sidewalk from the inside or building line of the street to and beyond the curb and out into the street. This ridge, as described by the plaintiff and her witnesses, was from three to four feet high on the inside line, where some bill boards were erected, and sloped down gradually all the way across the sidewalk and into the street. The plaintiff herself testified that it was three or four feet high next the bill boards; that it was about eight inches above the sidewalk at the outer edge, and being asked the question: "How high was the crown of the ridge above the walk north and south of it?" Answered.—"About eight inches high, I think, where I stepped upon it." She also said the ridge was about three feet across from one side to the other. The accident occurred in broad daylight, between three and four o'clock in the afternoon. Another of the plaintiff's witnesses testified: "I don't think it (the drift) was less than four feet deep near the bill boards, and extended out into the street across the walk; I don't think it was less than two and a half feet in the centre of the street; in the centre of the sidewalk; I think it extended for at least four feet into the street,

and at an angle of not less than forty-five degrees."

It is not necessary to repeat the other testimony on this subject, as it is all of the same character. It is manifest, therefore, that the obstruction on the sidewalk was plainly visible, was conspicuous, both as to its extent and character, and necessarily obtruded itself upon the notice and attention of every passer along the walk. It was in no sense a slight or partially concealed defect, such as might have escaped the notice of one walking on the pavement; moreover, the plaintiff admits that she had often noticed the drift before the accident, in going to her brother's across Tenth street. The evidence is equally conclusive, and entirely undisputed, as to the character, the dangerous character, of the obstruction. It was not a mere ridge of snow, but had become icy on the surface and very slippery. The plaintiff testified: "I stepped upon a ridge of ice that ran across the sidewalk, and my feet both slipped, and I was thrown with great force against a bank of ice behind me and injured severely." And again, being asked, "what was the condition of the walk where you fell?" She said, "It was icy, the snow having drifted around those bill boards and made a bank, and it had melted and frozen together until it became icy." Another witness for the plaintiff, Mr. Dunning, said: "It was hard and compact," and "it was icy." Another witness, Mr. Moody, said: "At this time it was icy; I remember it from the fact that it was quite icy at the time," and also "it was very slippery indeed." Magill, another of plaintiff's witnesses, testified, that "there was a permanent drift along this walk from that time in January; certainly for a long time there was a very heavy drift of snow and ice." He also said, in reply to a question, "What was the surface? A.—It was comparatively smooth and icy; one had that feeling that footing was insecure on it; it was an old drift." Mrs. Magill, another of the plaintiff's witnesses, said: "Then the cold came, freezing the tracks, leaving a very irregular icy surface on top of the drift." There was more testimony of the same kind, and none whatever in contradiction. Had there been no other testimony on this subject, we think there was quite enough to charge the plaintiff with full knowledge of the extent, the nature, and also the character of the obstruction, as hazardous and dangerous. But there was much more and equally conclusive testimony on that subject also. Mr. Hoffman, a witness for the plaintiff, having said that the ridge was about two feet on the curb-stone, and that the pitches of the ridge were very steep, was

asked, "What called your attention to the condition of the walk at that time?" And answered,—"Because mornings when we went to work we always had to go on the street; we could not go on the sidewalk." And again: "We went to work in the morning, and had to cross in the middle of the street." Moody, another of plaintiff's witnesses, said: "It (the ridge) crossed the curb-stone at this point, and the walk traveled by parties coming down Peach street, was shut off by this ridge, and the whole travel thrown into the street where the line of the drift crossed the curb-stone." And again: "It was so bad that I would not walk on it, either in going down or coming back, and on that block I walked in the street." W. E. Magill, after describing the drift, said: "Therefore it was, to my mind, a risky place; I always felt a little risky going up or coming down." And again: "The southeast pitch made it a source of anxiety when I walked along; I always felt a little anxious about myself as I walked only there, and the inclination was to drop down on Peach street instead of taking the risk of going on Tenth street." Mrs. Magill said: "I noticed also, from my window, that persons in coming from below Tenth street, would come on this drift and go around it even into the street; coming down street they often came to the top of this drift, and would stand; either way they turned it was slippery; and I have seen people stand there, and I have said to my sons that that walk was dangerous." Rev. J. H. Edwards, another of plaintiff's witnesses, said speaking of the drift and slope, "that became very icy, and very dangerous, very rough on the side towards the bill boards, although some passed there; some went around in the street." Also: "It was impassible, and dangerous for ladies especially." And again: "At the time of the accident, and for a long time before, it was a very dangerous piece of walk there; driving people into the street, unless they preferred to run the risk of it." E. Linfoot, another of plaintiff's witnesses, testified: "I pass there on an average about three times or four times a day, and the walk was awful bad; I slipped down myself; we had to go out into the street about ten feet from the curb to get around the pile of snow that had accumulated there." Mrs. Humphrey, who was present when the accident occurred, and assisted the plaintiff to arise, testified: "Q.—What was the condition of the walk where the accident occurred? A.—There was a drift running 'across it at least three feet high, that was very glassy and icy, smoothly traveled, and where it began on the south side it was not so steep as it was on the north; it



was a gradual slant on the south, much steeper on the north; it was a steep pich on the north side; it was while going over the top of that where she fell;" . . . "there was a descent towards the street, but the drift extended into the street; it was impossible to pass without going into the street, without going over the drift; towards the street the snow was tramped smooth and glassy; across the gutter it was trod smooth; it was like ice;" . . . "it was trodden smoothly into the gutter; it was a gradual slope, and glassy towards the street east." Against this mass of testimony there was not one word of contrary proof. It was absolutely without question, upon undisputed proof, that the drift of snow and ice which the plaintiff attempted to cross was a serious and a palpable obstruction in her way; that it presented a smooth, slippery, icy surface upon which to tread; that it was several feet in width, and elevated above the pavement with inclining sides, and that it was dangerous to pass over, and so regarded by many of those who traveled along that way. If it was right to instruct the jury that the plaintiff could not recover if she knew of the condition of the walk on the day of the accident, and could have avoided it, it was certainly the duty of the court to say so, if the undisputed evidence proved those facts. This has been many times decided: *Pennsylvania Railroad Co. v. Ogier*, 11 Casey, 60; *Catawissa Railroad Co. v. Armstrong*, 2 P. F. Smith, 282; *Pittsburgh & Connellsville Railroad Co. v. McClurg*, 6 Id., 294; *McKee v. Bidwell*, 24 Id., 218; *Goshern v. Smith*, 11 Norris, 435; *Baker v. Fehr*, 1 Outerbridge, 70.

We do not know how the conclusion could be resisted that the plaintiff had knowledge of the dangerous character of the drift, from the testimony already referred to. The drift was before her eyes, with all the indications of its dangerous character plainly visible. She could not but be conscious of them. Had she been riding along the street in a carriage she might not have noticed it, but she was a foot passenger along this very walk, and the drift was in her path. She was compelled to cross it or go around it. She attempted to cross it, and it is contrary to all human experience to suppose that she did so without noticing the surface upon which she was treading. She does not pretend to say that she did not notice it. On the contrary, she gives a minute description of it, and specially points out the elements of danger that were apparent. She does not say that she acquired this knowledge after the event. On the contrary, she expressly testifies, that she knew

of the drift before; had often noticed it, and thought it was dangerous. She testified as follows: Q.—You speak of there having been a drift upon that sidewalk for some time before? A.—Yes, sir. Q.—How do you know that was so? A.—In going across tenth street to my brothers, I often noticed the snow lying there. Q.—Had you before this injury? A.—Yes, sir; I had noticed the bank there. Q.—You are certain about that? A.—Yes, sir. Q.—What had called your attention to the bank of snow there; had it seemed to you dangerous? A.—Yes, sir. Q.—You had spoken about its condition and about its being dangerous? A.—I don't recollect; I remember I had thought of it. Q.—You had thought of it? A.—Yes, sir.

We cannot regard this testimony as inconsiderate or unintended. In its substance it corresponds with all the other testimony in the case, and there is nothing in its delivery indicating that the witness was taken unawares. It appears to us to be the frank and candid statement of a truthful witness, and made with deliberation. We are of opinion that all the testimony, including that of the plaintiff, clearly proves that the drift of snow and ice which she attempted to cross was of a dangerous character, and that this was known to her at the time of the injury. That she could have avoided it by going around it was conclusively proved by herself and her witnesses, and was disputed by none. She was asked: "Q.—Could you have avoided that walk by going towards the street farther? A.—Only by going almost to the other side of the street. Q.—Across the roadway? A.—Yes, sir; this water extended out some distance into the street." In view of this condition of the testimony, we think the case should have been taken from the jury and the defendant's seventh point affirmed. In other courts similar rulings have been made upon a similar state of facts, though of much less strength than these developed in this case. Thus, in the case of *Wilson and Wife v. City of Charlestown*, 8 Allen, 137, it was held, that a person who voluntarily attempts to pass over a sidewalk which he knows to be very dangerous by reason of ice upon it, when he might easily avoid it, cannot maintain an action against the town, which is bound to keep the way in repair, to recover for injury sustained by falling upon the ice. On page 138 the court say: "It is settled that if a person knows a way to be dangerous when he enters upon it, he cannot, in the exercise of ordinary prudence, proceed and take his chance, and if he shall sustain damage, look to the town for indemnity."



In the case of *City of Centralia v. Krouse*, 64 Ill., 19, the court, in their opinion, say: "Having undertaken to go where he knew it was positively dangerous, it must be held that he did so at his own peril. It was in daylight, and he could see that the walk was full of dangerous holes, and was all covered with snow and ice, and it was culpable negligence in him to undertake to pass over it. It was probably dangerous for any one, and it was highly imprudent in one so far advanced in life to undertake to pass over the walk in its then condition, and covered as it was with snow and ice. . . . It is not denied that he could have gone to the point where he desired to go by a safe route, by going only a short distance further. It was his plain duty to have taken the safer course. This he declined to do, but chose to go where he himself knew it was dangerous, and the injury that resulted must therefore be attributed to his want of proper care and caution."

In *Durkin v. Troy*, 61 Barb., 437, the court say: "Now the foundation of this plaintiff's cause of action, if he had one, is that this piece of ice was a dangerous obstruction to the passage of those using the sidewalk for that purpose, which the city was bound to remove, and the danger consisted in the liability of those who stepped upon it to slip and fall. The obstruction was, therefore, one to be avoided by those using the sidewalk and seeing or being able to see the ice; and if it could readily be avoided, the failure to avoid it, by one using the sidewalk, and plainly seeing the obstruction, must be accounted negligence. If there was danger in walking over this piece of ice, and the plaintiff voluntarily and unnecessarily undertook to walk over it, and fell and broke his leg, I do not see how he can meet the allegation that his own negligence contributed to the result, or avoid the conclusion that he must therefore fail to recover damages of the city. *Volenti non fit injuria*." . . . "If the ice presented a dangerous obstruction, which the defendant was bound to do away with, by removal or some other means, so that it was negligence on its part to leave it on the sidewalk, it must follow that it was negligence on the part of the plaintiff voluntarily and unnecessarily to venture upon this dangerous obstruction, however carefully he might attempt to carry himself upon it. The duty of the passenger in such cases is to avoid the obstruction and not to encounter its dangers."

In *Butterfield v. Forrester*, 11 East, 60, Lord Ellenborough, C. J., said: "A party is not to cast himself upon an obstruction which has been made by the fault of another, and

avail himself of it, if he do not himself use common and ordinary caution to be in the right." These principles are quite familiar, and could be sustained, if necessary, by an extensive citation of authorities, but that is not requisite.

Judgment reversed.

GORDON, STERRETT and TRUNKY, JJ., dissented.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

MAY 19, 1883.

*Nathan C. Draper v. Anthony Hyde et al.* Motion to rehear overruled.

MAY 21, 1883.

*Hamilton A. Moore, by next friend, v. The Met. R. R. Co.* Judgment of Special Term affirmed. *Charles T. Gorham v. Mary E. Burns et al.* Same.

*The W. & G. R. R. Co. v. The District of Columbia.* Mandate of S. C. U. S. received, confirming decree of the S. C. D. C. and execution ordered.

*The District of Columbia v. The Wash. Market Co.* Same.

*Charles H. Armes, administrator, &c., v. The District of Columbia.* Same.

*Catharine Ragan et al. v. Henry Haight et al.* Trustee made party complainant.

*Wm. W. Carruth, of Massachusetts,* was admitted to practice.

*Phoenix Mut. Life Ins. Co. v. Albert Grant.* Hearing fixed for June 4, 1883.

MAY 22, 1883.

*Leopold Luchs v. The Conn. Mut. Ins. Co.* Mandate of S. C. U. S. received, affirming judgment of the S. C. D. C. and execution ordered.

*Wm. B. Moses v. Susan E. Spalds et al.* Argued and submitted.

MAY 23, 1883.

*Henry C. Huntman* was admitted to practice. *John Campbell, administrator, &c., v. Nathaniel Wilson.* Judgment of Special Term affirmed.

*Benjamin L. Jackson et al. v. Eli S. Blackwood et al.* Opinion by court and decree in conformity to that opinion ordered.

*Oscar A. Stevens et ux. v. Edward L. Dubarry et al.* Judgment of Special Term affirmed.

*Edward R. Ives et al., v. Bernard Silverberg.* Judgment of Special Term affirmed.

*Benjamin I. Hilton v. Charles D. Gilmore et al., consolidated with Charles D. Gilmore.* Mandate of S. C. U. S. received in these consolidated causes, dismissing the appeals for want of jurisdiction.

*John M. Springman v. The Balt. & Pot. R. R. Co.* Judgment of Special Term affirmed.

MAY 24, 1883.

*Henry Jones v. Anson S. Taylor.* Judgment of Special Term affirmed.

MAY 28, 1883.

*Annie E. May v. Mark Broadhead et al.* Judgment of Special Term affirmed.

*Wm. B. Moses v. Susan E. Spalds et al.* Judg-

ment of Special Term affirmed with certain modifications.

U. S., ex rel. Eminent P. Halstead, administrator, &c., v. A. U. Wyman, Treasurer of U. S. Peremptory writ of mandamus against the defendant.

Mary K. S. Eaton v. Daniel A. Connolly et al. Judgment of Special Term affirmed.

Richard H. Porter v. Stephen V. White. Dismissed.

John B. Hammond v. James E. Miller. Argued and submitted.

MAY 29, 1883.

U. S., ex rel. Samuel Ruggles, v. Henry M. Teller, Secretary of the Interior. Rule to show cause why writ of mandamus shall not issue.

Rich & Bro. v. Chandler. Dismissed.

Elihu E. Jackson et al. v. James E. Miller. Argued and submitted.

MAY 31, 1883.

John C. Shea, of Penn., John M. McKinney, W. B. Todd, Geo. P. Balch, Henry R. Webb, Samuel M. Yeatman, Charles A. Seun, Robinson White, B. F. Doyle, Homer H. Swaney, Lyndon A. Smith, Wm. A. Redmonds, Josiah Q. Kern, and Victor H. Olmstead were admitted to practice.

The Fifth Baptist Church v. The Balt. & Pot. R. R. Co. Motion for interest on judgment. Argued and submitted.

City National Bank v. Fanning. Argued and submitted.

JUNE 1, 1883.

Richard H. Porter v. Stephen V. White. Dismissed.

Louisa E. Sturges v. Lavinia Holladay et al. Argued and submitted.

Hamilton A. Moore, by next friend, v. The Met. R. R. Co. Motion for a new trial, &c., not ground for appeal. Appeal dismissed. Motion overruled and judgment of Special Term affirmed.

#### EQUITY COURT.—Justice James.

MAY 1, 1883.

Temple v. Worthington. Sale finally ratified.

MAY 2, 1883.

Bennett v. Egan. Pro confesso against defendant Egan granted.

Cypert v. Green. Complainant to give security for costs.

Auld v. Cooke. Trustee appointed.

Pepper v. Shepherd. Plea to stand as an answer. Pro confesso against Shepherd made final.

Mackall v. Mackall. Motion to limit defendant as to time denied.

Fitzgerald v. Fitzgerald. Pro confesso against defendant and reference to examiner ordered.

Van Hooke v. Van Hooke. Attachment directed to issue against defendant.

Burns v. Met. Building Asso. Auditor's report confirmed.

Palmer v. Bowers. Pro confesso against defendant Van Henson, and referred to auditor.

MAY 3, 1883.

Saunders v. Bowen. Substitution of trustee ordered.

Oertley v. Oertley. Testimony before examiner ordered taken.

Shoemaker v. Campbell. Same.

Stansbury v. Inglehart. Guardian ad litem appointed.

Chase v. Chase. Auditor's report confirmed.

Sykes v. Sykes. Testimony ordered taken.

Crandell v. Wash. City Savings Bank. Depositors debarred unless claims are presented by January 1, 1884.

Garrison v. Garrison. Guardian ad litem appointed.

Castine v. Castine. Testimony before examiner ordered taken.

MAY 4, 1883.

McNally v. Ward. Pro confesso made absolute and lien declared.

Clark v. Howard. Same.

Bigelow v. Mason. Money ordered to be paid by Riggs & Co.

Bush v. Stanton. Guardian ad litem appointed.

Payne v. Payne. Sale ratified nisi.

Woodruff v. Nat. Shelf and File Co. Motion to suppress ordered to be heard at final hearing.

Yeabower v. Kengla. Wm. D. Sullivan allowed to intervene.

Rosenberg v. Rosenberg. Testimony ordered taken.

Ward v. Ward. Sale confirmed.

MAY 5, 1883.

Taylor v. Ryan. Referred to auditor.

Brower v. Herth. Pro confesso against Herth ordered.

Webster v. Coltman. Motion to extend time to take proof overruled.

MAY 7, 1883.

Bush v. Stanton. Guardian ad litem appointed.

Leddy v. Leddy. Sale ordered by trustees.

Burchell v. Morgan. Minutes ordered to be corrected.

Pitz v. Pitz. Alimony increased.

MAY 8, 1883.

Bush v. Stanton. Referred to auditor.

Berth v. Berth. Guardian ad litem appointed.

Barber v. Gilmore. Pro confesso against defendant Palmer.

Ex parte Capitol & S. W. R. R. Referred to auditor.

MAY 9, 1883.

Bohn v. Fay. Appearance of absent defendant ordered.

Young v. Young. Sale ratified nisi.

In re B. U. Keyser, &c. Authority to compound an indebtedness granted.

Donoghue v. Sullivan. Auditor's report confirmed and distribution ordered.

MAY 10, 1883.

Craig v. Craig. Sale confirmed nisi.

Bush v. Stanton. Trustee appointed and cause referred to auditor.

Jones v. Jones. Rule on defendant granted.

Barker v. Penn. Party ordered to file answer.

Follin v. Golden. Guardian ad litem appointed.

Yeabower v. Kengla. Commission to take testimony ordered to issue.

Wilson v. Voorhis. W. D. Davidge allowed to intervene.

Worthington v. Reed. Sale ratified and conveyance ordered.

Ward v. Hill. Decree pro confesso vacated.

Winingder v. Dougherty. Guardian ad litem appointed and referred to auditor.

Young v. Young. Referred to auditor.

MAY 11, 1883.

Stone v. Stone. Leave to amend bill granted.

Cissell v. Muth. Restraining order granted.

Leddy v. Leddy. Decree modified.

Loughran v. Meyer. Commission to get answer of infant ordered to issue.

Fitzmorris v. Moran. Receiver appointed.

MAY 12, 1883.

Swann v. Swann. Pro confesso against certain defendants.

Lazenby v. Lazenby. Interpleader ordered and referred to auditor.

Willard v. Wylie. Bryan admitted party defendant.

Groot v. Hitz. Ordered to be heard at General Term.

Fleming v. McNair. Trustee's and auditor's report ratified.

MAY 14, 1883.

Barber v. Gilmore. Order vacated.

Groot v. Hitz. Investment of funds ordered.

Ward v. Ward. Referred to auditor.

Power v. Power. Bond allowed nunc pro tunc.

Schell v. Elliot. Auditor's report ratified.

Jones v. Jones. Order modified.

Rinehart v. Rinehart. Divorce a vin. mat. granted.

#### CIRCUIT COURT.—Justice Mac Arthur.

MAY 17, 1883.

District of Columbia v. Poor, administrator. Off calendar.

U. S., use of Stenzell, v. Mawman. Leave to amend declaration.

Waggaman v. Turton. Judgment affirmed.

Green et al. v. Ealin. Death of Connolly suggested. Juror withdrawn and case continued.

Kerngood Bros. v. Gusdorf. Off calendar.

Metzger & Bro. v. Penn. R. R. Co. Verdict for plaintiff for \$25.

Fearson v. Lown. Defendant called and judgment.

MAY 18, 1883.

Mayer v. Hall Bright H. & Co. Further answer required.

U. S., use of Beck, v. Brewer et al. Stricken from calendar on motion.

Miller v. Bennett et al. Off calendar.

Kohr v. Stevens. Order for inquisition.

MAY 19, 1883.

Waters v. Hutchins. Judgment of condemnation.

Birche v. Sheriff. Motion to set aside judgment granted.

Curtis v. Cluss. Motion for judgment overruled.

U. S. v. Dudley et al. Motion to strike out plea overruled.

Butts v. Solomon. Motion to dismiss appeal overruled.

Harris v. Damman. Motion to require the marshal to pay.

Miller v. May. Motion to quash certiorari granted.

Palmer & Co. v. Martin. Judgment by default.

Strong v. Dist. of Col. Motion to elect overruled.

Kirk v. Young. Reference set aside.

Nichols v. Main. Bond for costs.

MAY 21, 1883.

Martin et al. v. Howard. Discontinued.

U. S. v. Sweet et al. Off calendar.

McBride v. Flerohill. Submitted.

U. S., use of Adams, v. Upperman et al. Verdict for \$104.80.

Snyder Bros. v. Kappel. Suit dismissed.

MAY 22, 1883.

Emery Coal Co. v. Haskins et al. Verdict for \$684.

O'Day v. Vansant. Verdict for plaintiff. Damages one cent.

MAY 23, 1883.

Sons and Daughters of Liberty No. 1 v. White et al. Verdict for defendant.

Vinson, administrator, v. Beveridge. Off calendar.

Kinney v. B. & O. R. R. Co. Suit dismissed.

MAY 24, 1883.

Turner v. Silverberg. Verdict for plaintiff for \$4.65.

Miller v. Bennett et al. Set aside and continued.

Fearson v. Lown. Stay of execution.

Lulladay & Co. v. Adler. Verdict for defendant.

Trustee of Louisa Horn v. Rives. Referred to auditor.

Gordon v. Foerch et al. Verdict for defendant.

U. S. v. Howgate. Judgment of condemnation.

Strong v. Dist. of Col. Referred to W. P. Clarke, H. E. Paine, and Edward Clark.

#### CRIMINAL COURT.—Justice Wylie.

MAY 21, 1883.

U. S. v. Dorsey et al.

R. G. Ingersoll resumed his argument for the defense, and on May 25th concluded.

MAY 29, 1883.

The counsel for the defense having concluded their argument, Mr. Merrick, for the Government, commenced the reply.

JUNE 1, 1883.

Mr. Merrick had not finished his argument for the Government.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

MAY 26, 1883.

24501. Charles C. Bryan v. Albert P. Morrow. Note and account, \$378.86. Pliffs attys, F. P. B. Sands.

24502. Lizzie Oannon v. Clayton McMichael. Replevin. Pliffs atty, J. K. Redington.

24503. John M. Rogers v. William J. Dunivan. Replevin. Pliffs atty, Jeff Chandler.

MAY 28, 1883.

24504. Same v. John J. Peabody et al. Damages, \$50,000. Pliffs attys, Hunton & Chandler.

MAY 29, 1883.

24505. Henry Hewlett v. Charles E. Barber. Replevin. Pliffs attys, Riddle, Davis & Padgett.

24506. Ella Chelini v. Ehud N. Darling. Note, \$250. Pliffs atty, T. A. Lambert.

24507. Amos Baum v. John B. Olcott et al. Note, \$350. Pliffs atty, D. O'O. Callaghan.

MAY 31, 1883.

24508. Elise T. Stanton v. District of Columbia. Damages, \$15,000. Pliffs attys, Henkle & Duhamel.

24509. Jane M. Miller v. Henry Douglas. Acc't., \$175.14. Pliffs attys, W. J. Newton.

24510. Susan B. Fugitt v. Chas. W. Sonnenschmidt et al. Judgment of Justice Bundy, \$93. Pliffs attys, Birney & Birney.

#### IN EQUITY.—New Suits.

MAY 26, 1883.

8550. Benjamin F. Gray et al. v. Edwin A. McIntire et al. For an account. Com. sol., Job Barnard.

8581. Rebecca Young v. Cornelius W. Young. For divorce. Com. sol., John J. Weed.

8583. Estate of Alex. S. Oliver et al. infants. Petition of O. P. Oliver, guardian. To approve proceeding, Probate Court. Com. sol., Chas. P. Oliver.

MAY 28, 1883.

8585. Mary V. Burrows v. Joseph Burrows et al. Substitution of trustee. Com. sol., H. B. Davidson.

8584. Gregory Kappler, Jr. v. Oatharine Kappler. For divorce. Com. sol., L. C. Williamson.

MAY 29, 1883.  
 8565. Louis R. Bart v. George Juenemann et al. Injunction. Com. sol's, W. K. Duhamel.

MAY 31, 1883.  
 8566. Dorsey E. W. Carter, petition to change name. Com. sol's., Olaughton & Olaughton.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 1st day of June, 1883.  
 BENJAMIN S. HILTON, Complainant.

v. JOHN DEVLIN ET AL, Defendants. No. 8506. Eq. Doc.  
 On motion of the plaintiff, by Mr. F. P. B. Sands, his solicitor, it is ordered that the defendants, John Devlin, William H. Dickinson, Nathaniel P. Chipman, Epaphras S. Sherman, A. Heydenrick and George Whitney, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.  
 By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 23-3 E. J. Maigs, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscribers, of Baltimore, Md., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Amanda F. Beveridge, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of June, 1883.

DAVID PINKNEY WEST,  
 JOSEPH WHYTE,

Administrators.

23-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of June, 1883.  
 SONS OF TEMPERANCE NATIONAL  
 MUTUAL RELIEF SOCIETY

v. ANASTASIA HIGGINS ET AL. No. 8567. Eq. Doc. 23.  
 On motion of the plaintiff, by Mr. S. M. Yeatman, its solicitor, it is ordered that the defendants, Anastasia Higgins and Eli Higgins, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. 19-3 Test: E. J. Maigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.

In the matter of the Will of Noble Young, late of the city of Washington, in the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Felix Nemegyei, Alexander Stranzard and Harry O. Egbert.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of June next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 J. J. DARLINGTON, Solicitor. 22-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.

In the matter of the Will of Ezekiel Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Charles H. Cragin, Jr.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of June next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters of Administration, will annexed, on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 O. H. CRAGIN, JR., Solicitor. 22-3

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1883.

MARY MCHUGH, Administratrix.  
 B. H. WEBB, Solicitor. 22-3

#### THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. H. St. John, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1883.

MARY F. ST. JOHN,  
 Administratrix, 18 5th st., a. e. 22-3

#### THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jeannie O'Connor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1883.

23-3 CHARLES W. ELDRIDGE, Administrator c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, May 28, 1883.

In the matter of the Will of Bridget McNamara, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Patrick H. McNamara.

All persons interested are hereby notified to appear in this court on Friday, the 22d day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 O. D. BARRETT, Solicitor. 22-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of May, 1883.  
 REBECCA YOUNG

v. CORNELIUS W. YOUNG. No. 8,561. Eq. Doc. 23.

On motion of the plaintiff, by Mr. John J. Weed, her solicitor, it is ordered that the defendant, Cornelius W. Young, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 22-3 R. J. Maigs, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Margaret A. Barrett, late of Cincinnati, Ohio, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of May, 1883.

22-3 WM. T. S. CURTIS, Adm'r c. t. a.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Susan Falconer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 28th day of May, 1883.

JAMES CAMPBELL,  
MICHAEL O. WEAVER,  
Administrators.

W. J. NEWTON, Solicitor.

23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

MARY ANN HOLMEAD ET AL. }

No. 8,377. In Equity.

COLUMBUS J. ESLIN ET AL. }

It is, this 29th day of May, A. D. 1883, ordered, that the report made by A. A. Lipscomb, trustee in this cause, of an offer to purchase lots twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42) and forty-three (43), of John J. Johnson's recorded sub-division of part of "Mt. Pleasant" and "Pleasant Plains" belonging to the estate of the late James Eslin, deceased, a copy of which is filed with said report, for the sum of \$37,000, to be paid as provided in the original decree, passed in this cause the 6th day of December, A. D. 1882, be and the same is hereby affirmed unless cause to the contrary be shown on or before the 29th day of June, A. D. 1883. Provided, a copy of this decree be published in the Washington Law Reporter and the Washington Evening Star once a week for three weeks prior thereto.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 23-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, May 24, 1883.**

GEORGE W. YEABOWER ET AL. }

No. 7,779. Eq. Doc. 21.

HELEN R. KENGLA ET AL. }

William J. Miller and Samuel Maddox, trustees, having reported that they have sold the real estate in the proceeding in this cause mentioned, to wit: all of lot No. 267, and part of lot No. 266, in Beatty and Hawkins' addition to Georgetown, to Phillip Young, at and for the sum of \$6,710; it is, this 24th day of May, A. D. 1883, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last-named day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 23-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Orphans' Court Jurisdiction.**

IN RE CHARLES E. GIBBS }

Guardian of

ELIZABETH A. MCGREW. }

Upon consideration it is, by the court this 31st day of May, A. D. 1883, ordered, that the sale herein reported to Andrew J. Simpson, be ratified and confirmed on 6th day of July next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before said last mentioned day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 23-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph Reese, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1883.

EMMA L. REESE, Executrix.  
R. W. McPHERSON, Solicitor.

23-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Prince William County, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James O. Reid, late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY M. HIGGINS,  
Administratrix.

Witness: GEO. E. JOHNSON,  
C. STORES, Solicitor.

23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.**

In the matter of the Estate of Washington Danforth. Application for Letters of Administration on the estate of Washington Danforth, of Vicksburg, Miss., formerly of the District of Columbia, has this day been made by Daniel O'C. Callaghan, at the request of James H. Danforth, brother of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of the District of Columbia, and some newspaper published in Vicksburg, Miss., previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 23-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, May 23, 1883.**

CATHARINE OURAND }

No. 8426. Eq. Doc. 22.

GEORGE E. OURAND ET AL. }

The trustee in this cause having reported the sale of lot 80, in "Turtons" sub-division of part of square 180, for the sum of \$3,300, it is, this 23d day of May, 1883, ordered, that the said sale be ratified and confirmed unless objections thereto be filed herein on or before the 23d day of June 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior to the said last-mentioned date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 21-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

WILLIAM E. CLARK }

No. 5,577. Equity.

ALBINA SEIBERT ET AL. }

Job Barnard, trustee herein, having reported a sale of block 23; lots No. 1, 2, 3, 4, 5, 6, 7, 8 and 9, in block 29; and part of lot 11, in block 30, fronting 19.37 feet, in Gales street, and 25 feet on 16th street, all in sub-division of part of "Long Meadows," made by said trustee and others, to William E. Clark, for \$4,125; and a sale of block 27, in said sub-division, to Felix P. Seibert, for \$6,000:

It is, this 23d day of May, 1883, ordered, that said sales be confirmed on the 23d day of June, 1883, unless good cause to the contrary be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before that day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 21-3 R. J. MEIGS, Clerk.

EDWARDS & BARNARD, Solicitors.

21-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, May 18, 1883.**

In the matter of the Will of Jacob L. Dorwart, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan D. Dorwart.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of June, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

VOORHEES & SINGLETON, Solicitors.

21-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 25, 1883.**

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Magee and Laura Magee.

All persons interested are hereby notified to appear in this Court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 21-3 H. J. RAMSDELL, Register of Wills.

**CHANCERY SALE OF VALUABLE IMPROVED** real estate in the city of Washington, being premises No. 1315 New York Ave., n. w.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 23d day of May, 1883, and an amended decree passed on the 23d day of May, 1883, in equity cause 8831, we shall sell, at public auction, in front of the premises, on MONDAY, the 4th day of June, 1883, at 5 o'clock, p. m., all that certain piece or parcel of ground, lying and being in the city of Washington, District of Columbia, and distinguished on the ground plan thereof as lot 2, in Davidson's recorded subdivision of square 251. The same being improved by a large three-story brick dwelling. Terms of sale, as prescribed by said decree: one fourth cash, residue in three equal instalments, at one, two and three years respectively from day of sale, with interest at the rate of five per cent. per annum, to be secured by deed of trust upon the property sold; or all cash, at option of purchaser. A deposit of \$500 required of purchaser at time of sale. All conveyancing at purchaser's cost.

The trustees reserve the right to re-advertise and sell the property at defaulting purchaser's cost and risk if terms are not complied with in ten days.

CHARLES H. ORAGIN, Jr. Trustee,  
Office: 321 Four-and-a-half-street, n. w.

WILLIAM A. GORDON, Trustee,  
Office: 330 Four-and-a-half-street, n. w.

21-2

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Mary E. Magruder, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

WILLIAM A. GORDON,  
Administrator c. t. a.

21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John M. Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

MARY VIRGINIA WELLS, 949 K street, n. w.  
Geo. F. APPELBY, Solicitor. 21-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN THOMPSON ET AL.

v.

THOMAS ARNOLD ET AL.

No. 1,023. Equity.

Wm. F. Mattingly, trustee, having reported that he sold on May 1, 1883, at public auction, said part of sub-lot No 22, in square 197, described in this cause, to John Curtis, at 76 cents per square foot, it is this 24th day of May, A. D. 1883, ordered, that said sale be finally ratified and confirmed on the 15th day of June, 1883, unless cause to the contrary be shown before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 21-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 19, 1883.**

In the matter of the Will of John G. Killian, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Mary M. Killian, who also prays that Letters of Administration, c. t. a., may be granted to some suitable person.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. A. NEWMAN, Solicitor. 21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary F. Woods, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.  
21-3 ELIZABETH M. WOODS, 1017 O st., s. w.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. May 10, 1883.**

CHARLES A. CRAIG

No. 8302. Eq. Doc. 22.

WILLIAM T. CRAIG ET AL.  
The trustee in this cause having reported that on Monday, the 7th day of May, 1883, he sold to Mr. A. H. Herr, that part of lot 125, in Beatty & Hawkins' addition to Georgetown described in the bill in this cause, for the price of \$1,200, ordered, this 10th day of May, 1883, that said sale be ratified and confirmed unless cause to the contrary be shown the 12th day of June, next. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louisa Joachim, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of May, 1883.  
MICHAEL JOACHIM, Executor.  
F. H. MACKAY, Solicitor. 20-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of May, 1883.**

AUGUSTUS S. WORTHINGTON ET AL. } No. 8498. Eq. Doc. 22.

v. GEORGE O. RANDALL ET AL.

On motion of the plaintiffs, by Messrs. Worthington and Hagner, their solicitors, it is ordered that the defendant, George O. Randall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliab Kingman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.  
WILLIAM W. BOYCE,  
ABNER KINGMAN,  
Executors.

20-3

*Legal Notice.***IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Probate Business.**

In re estate of Virginia Tayloe, deceased.  
Upon hearing the petition this day filed of Virginia Tayloe Lewis, to propound the Will and Testament of said deceased, and that Administration be granted on said estate with the will annexed, it is, this 14th day of May, A. D. 1883, ordered, that the prayer of said petition to admit the Will to Probate and Record and that Administration be granted to her, said Virginia T. Lewis, unless cause be shown to the contrary on or before the 16th day of June next. Provided, that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior thereto.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: H. J. RAMSDELL,  
Register of Wills, D. C.

JESSE MILLER, Proctor.  
MAY 15th, A. D. 1883.

20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Legal Cowles, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

ISRAEL L. TOWNSEND, Administrator.  
CHITTENDEN & MACKAY, Solicitors.

20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ann Phillips, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of May, 1883.

MRS. JANE LYNCH, Administratrix.  
HANNA & JOHNSTON, Solicitors.

20-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of May, 1883.**

WILLIAM DUVAL

No. 5567. Eq. Doc. 23.

v. ANN DUVAL MITCHELL ET ALIAS.

On motion of the plaintiff, by Mr. William A. MeLOY, his solicitor, it is ordered that the defendants, Ann D. Mitchell, Mary J. Boone, Henry O. Boone, Julia A. Anderson, Geo. W. Anderson, Wm. H. Vermillion, Harriet Ferguson, Agnes Norfolk, Geo. P. Norfolk, Alice Cranford, Thomas Cranford, Jeremiah Sweeney and John Thomas Sweeney, cause their appearance to be entered herein on or before the first rule-day occurring forty day after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice,  
A true copy. Test: 20-3 R. J. MEIGS, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 15th day of May, 1883.**

DANIEL MASON

No. 8,568. Eq. Doc. No. 23.

v. RACHEL MASON ET AL.

On motion of the plaintiff, by Messrs. Carns & Miller, his solicitors, it is ordered that the defendants, William Mason and David Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. CHARLES P. JAMES, Justice,  
True copy. Test: 20-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Sarah Hammond, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1883.

EDWARD H. THOMAS.

19-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. May 11, 1883.**

In the case of Hudson Taylor, Executor, of Anna Lindale, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of June, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
PETER HULME, Solicitor.

20-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Rachel W. Birch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1883.

GEO. A. BARTLETT, Administrator.  
CHAPIN BROWN, Solicitor.

19-3

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Duval, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of May, 1883.

WILLIAM DUVAL,  
WILLIAM G. GREEN,  
Administrators.

19-3

WM. A. MELOY, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Isaac Delano, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1883.

JAMES S. DELANO, Administrator.  
E. F. CUFFY, Solicitor.

19-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

YOUNG ET AL.

v. YOUNG ET AL.

Equity. No. 7,771.

Charles Walter, the trustee in this cause having reported to the court that he has sold to Horace K. Fulton, the real estate mentioned in the proceedings in this cause, viz.: lots lettered "F" and "G" in Colman's sub-division of lots four, five, six and seven, in square numbered two hundred and forty-five, in the city of Washington and District of Columbia, at and for the sum of eight thousand and five hundred dollars cash, and that said Fulton has fully complied with the terms of sale:

It is, thereupon by the court this 9th day of May A. D. 1883, ordered, adjudged and decreed that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the eleventh day of June, 1883. Provided, a copy of this order be published once in each week for three successive weeks in the Washington Law Reporter prior to said eleventh day of June, 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 19-3 R. J. MEIGS, Clerk.



# Washington Law Reporter

WASHINGTON - - - - - June 9, 1888.

GEORGE B. CORKHILL - - - EDITOR

UNDER THE HEAD OF "PUBLIC OPINION AND JUDICIAL OPINION," the *Daily Register*, the law journal of New York, adverting to the fact that the extreme freedom with which some newspapers discuss the decisions of the courts and the progress of causes under consideration before judges and juries, had provoked some debate as to the propriety of their so doing, indulged in the following temperate and sensible view of the subject:

The old traditions by which a matter *sub judice* was a matter almost unmentionable in public prints, have passed out of life, and the very fact that a question is under judicial consideration is now matter of news; and the probabilities of a decision one way or the other, and even the arguments pro and con, together with supposed motives unworthy the name or influence of arguments, are often made the subject of editorial comment without the least restraint. And in some cases, after the decision is announced, the discussion is renewed, with reflections on the propriety or animus of the judgment.

The time has, doubtless, gone by when the bench or any other department of government or any profession can expect immunity from critical consideration, or from the public expression of the results of such consideration. But the time has not gone by, and is not likely to, when ignorance will make itself ridiculous and offensive in assuming to criticise that which it does not comprehend, and when passion will betray its weakness in argument by efforts at force in invective and imputation.

The strength of American law is not in arbitrary power, but in trained reason applying the principles of justice to the material interests of men; and there never was a time when the public mind was so capable and so willing to comprehend the merits of a question of law, even if passionately discussed, and so quick to recognize and applaud a just disposition of a controversy. In every litigation that attracts public attention there are strong, and often unscrupulous, interests arrayed on both sides, but there is a still larger public, looking on, disinterested, but attracted by the heat of the struggle, partly curious to see which way

it will come out, but still more interested to see it come out fairly right. While the unjust animadversions of a partisan press may often cut very deeply those at whom they are aimed, yet it remains true that the general freedom of discussion of which such aspersions are the incidental abuse affords, in the long run, the great opportunity of appreciation for judicial ability. The recent career of Sir George Jessel, in England, is a striking, but by no means exceptional, illustration of the warm place in the general regard, and the promotion in position and emolument, which legal strength impartially and fearlessly used will win, even for a man of slighted origin, under the system of full publicity which the modern newspaper reporting has introduced into the law courts.

The abuses that ought to be restrained are impertinence of newspaper argument of a judicial question after its forensic argument and submission, and before its decision: the disposition of the friends or allies of a disappointed party to retaliate with irrelevant criticisms on the judge; and the too frequent but transparent attempt to create an appearance of a public opinion in advance of a trial or decision, in the hope it may influence the result.

Undoubtedly, many of these offenses originate with journalists who disregard the canons of the best journalism; but we are inclined to think that lawyers and their clients are chiefly responsible as the instigators of such abuses; and that the most important remedy for the evils these abuses inflict on the profession is, in a more honorable sense, in the profession itself of the paramount right of the profession to be the advocates of either side without interference, and the impertinence of attempts to substitute irresponsible penny-a-lining in place of responsible and properly compensated forensic skill and learning, as a means of securing a favorable decision.

AN OLD engraving entitled "mental abstraction" represents a reader sitting by the fire with his breakfast waiting for him, so engrossed in his book that he is calmly boiling his watch while he holds the egg in his hands to count the minutes necessary for the due settlement of the yolk.

In a suit by a patentee against a licensee for license fees for the use of a patented improvement, something corresponding to an eviction of the licensee must be pleaded and proved if he would defend against an action for royalties.



## Supreme Court District of Columbia.

### GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

JAMES W. WHITE, ANGELICA BROOM AND  
MARY FRANCES DAWSON,

vs.

JAS. H. HILTON.

No. 23,123. At Law.

{ Decided May 7, 1883.  
The CHIEF-JUSTICE and Justices HAGNER  
and COX sitting.

1. Testator died in 1843, devising real estate in the District to H. for life, with remainder in fee to Mary D. and others. H. died in 1876. In an action of ejectment brought by D. (now married) and the other remaindermen it was—  
*Held*, That, although D. only came into possession after the passage of the Married Woman's act of 1869, her *title* was derived from a will which took effect prior thereto, and consequently her rights in relation to the property were to be determined by the common law.
2. The husband has a freehold in such of the wife's freehold property as she acquired prior to the act of 1869, and although her title be a joint tenancy, he is entitled, in right of his marriage, and during the coverture, to the possession and to the rents and profits.
3. Where such a title is held by the husband it is equivalent to a freehold, and ejectment by the wife and her joint tenants to recover the possession, cannot be sustained unless the husband be joined in the action.
4. Where the question is one of personal capacity to sue, as coverture, it should be pleaded in abatement, but where the question is one of *title*, as that the title claimed by one of the female plaintiffs in ejectment is in her husband (who is not a party to the action) and not in herself, this may be shown under the general issue.

#### STATEMENT OF THE CASE.

This was an action of ejectment brought by the plaintiffs above named to recover possession of part of a lot of ground situated in Washington, D. C., in which they claimed a fee-simple.

The title of the plaintiffs was derived from the following clause of the will of William Magill, executed in November, 1842: "I devise to Ann Hardy part of lot one (1) in square nine hundred and seventy-five (975), together with all the improvements thereon, during her natural life, and at her decease, I devise said property to my three grandchildren, Angelica Fowler, James William White, and Mary Frances White, them and their heirs forever."

The testator died in 1843, and the will was probated in the same year. Ann Hardy, the life tenant, died in 1876.

The above facts were shown upon the trial,

but in addition it appeared that one of the plaintiffs, viz., Mary Frances Dawson, who was the Mary Frances White mentioned in the will, was, before the filing of the suit and at the time of trial, a married woman; that her husband was living, and that there had been children born of the marriage. At the close of the plaintiffs' case, defendant's counsel moved the court to instruct the jury, "that the plaintiffs could not recover in the present action because of the non-joinder of the husband of the co-plaintiff, Mary Frances Dawson, he being a necessary party." The motion was granted and the court instructed the jury to return a verdict for the defendant, which was done, and the case came before the General Term upon an exception to this instruction.

W. K. DUHAMEL and C. F. ROWE for plaintiffs:

The deviser left a life estate to Ann Hardy, with a remainder to the plaintiffs and their heirs; such at common law is a joint tenancy. 1 Greenleaf's Cru., 364; 3 Id., 330, Tit. 38, c. 15, §§ 6 and 7; Tuckerman v. Jefferies, 11 Mod., 108; Hurd v. Lenthall, Stiles, 211, 3 Bacon Abr., 681; Doe v. Southern, 2 B. and Adol., 635.

The Maryland acts (1794, c. 60, § 8, and 1797, c. 114, § 5) for partition recognize joint tenancies, and have relation to persons who cannot act for themselves.

Because they permit a severance does not destroy joint tenancies as every adult could destroy the tenancy. 2 Williams' Real Property, 132.

A joint tenancy existed in Maryland by the common law. Mayberry v. Brien, 15 Pet., 35; Hannan v. Towers, 3 H. and J., 149; Johnson v. Howard, 1 H. and McH., 281.

And that State, by the act of 1822, c. 162, simply reversed the rule of construction. Even if the courts and bars of Maryland and the District have so long remained in error, a new rule would be against the policy of the law and disturb the titles to estates. Peters v. Suters, 2 Mac A., 519.

The act of 1876, it is said, ignores them; therefore they do not exist. But they are not within the evil sought to be remedied by the act. It seeks to compel a partition. In joint tenancy, each tenant by his own act can destroy.

This court has, however, recently recognized the existence of joint tenancies. Butler v. Butler, 10 W. L. R., 772.

Mrs. Dawson being a joint tenant, no right has ever vested in her husband which requires him to be a party. 1 Glf. Cru., 166; Id., 842, 364; Williams' Real Property, 219.

Again, the life tenant died and the plain-

tiffs only became seized December 28, 1878; seizen is necessary to entitle the husband to any right, and the statute has intervened. 2 Kent Com., 29; Dunn v. Sergeant, 101 Mass., 339.

The record does not show that she was married at the passage of the act or at the death of the life tenant.

But assuming the husband was a necessary party or had rights, such defects must be availed of by plea in abatement, and could not be made on the general issue. 1 Ch. Pl., 66; Green v. Lister, 8 Cr., 242, 2 Wh., 306.

Ann Hardy was left a life estate, and the testimony shows she occupied the premises after the death of the deviser. It is a presumption of law that she occupied under, and her possession was that devised by the will. Colver v. Warford, 20 Md., 395, 396; Austin v. Bailey, 37 Vt., 223; McCall v. Pryer, 17 Ala., 537; Hall v. McLeod, 2 Metc. (Ky.), 102.

There having been possession by the deviser and the life tenant, it was only at her death their title accrued, in 1878. Webster v. Cooper, 14 How., 502.

We are not obliged to show a perfect legal title; we may show color of title and possession; or possession alone is sufficient, and the devisees of one who died possessed is entitled to recover. McCall v. Pryor, 17 Ala., 536, 537; Smith v. Lorillard, 10 John., 354; West v. Pinn, 4 W. C. C., 693; Hylton v. Brown, 1 W. C. C., 204; Turner v. Aldridge, 1 MacAl., 232; Robinson v. Campbell, 4 Wh. (Orig. Ed.), 224 (n.), a.; Christy v. Scott, 14 How., 292; Burt v. Panjand, 99 U. S., 180; Campbell v. Rankin, 99 U. S., 261.

BRADLEY & DUVAL for defendants:

The proof shows that the alleged possession of plaintiffs was under the Magill will, by virtue of the devise of a vested remainder to them as tenants in common; but in that estate the husband of one of the plaintiffs, Mary F. Dawson, *in jure uxoris*, had a life estate as tenant by the curtesy, and as such tenant was entitled to the possession and profits to the exclusion of his wife. There was no error in the ruling of the court below that he should have been a party plaintiff in this action, for he was a necessary party.

A tenant by the curtesy initiate may sue alone for the possession of his wife's land and for damages for withholding it. Gregg v. Tesson, 1 Black, 150; Jackson v. Leek, 19 Wend., 339; Thompson v. Green, 4 Ohio St., 216; Tucker v. Vance, 2 A. K. Marsh, 458; Chambers v. Handley, 3 J. J. Marsh, 98.

It has been held, however, that the wife must join. Bratton v. Mitchell, 7 Watts, 113,

At common law the husband's interest in the estates of which the wife was possessed, at the time of the marriage was a freehold, he alone having the right of entry and the present right of exclusive enjoyment. The wife could not recover the lands from a stranger, even though her husband was joined as defendant, and disclaimed title, and admitted the wife's right to possession. Clark v. Clark, 20 Ohio St., 128.

Actual seizen is not necessary in order to entitle husband to curtesy. It is sufficient that the wife had title and a potential seisin or right of seisin—that is, the right to demand and recover the immediate possession. Bush v. Bradley, 4 Day, 298; Kline v. Beebe, 6 Conn., 494; Stoolfors v. Jenkins, 8 S. & R., 175.

The general rule is that only persons may join in bringing an action at law whose interests are joint or united. Hence on a joint demise the title proved must be joint, or the plaintiffs cannot recover. Taylor v. Taylor, 3 A. K. Marsh, 19; Hoyle v. Stowe, 2 Dev., 318.

If one of the plaintiffs has no title the co-plaintiffs cannot recover, even though they be vested with the whole title, for the joinder of too many plaintiffs is ground for non-suit on the trial whether the action be for tort or on contract. Murphy v. Orr, 32 Ill., 489.

In trespass it is a settled rule that all the plaintiffs must be competent to sue; otherwise the action cannot be supported. Marsteller v. McClean, 7 Cranch, 156.

In any event, if there was no curtesy, and the husband of the plaintiff (Dawson) could not have sued alone for possession, his wife must have made him plaintiff with her; for, at common law, the wife had no right to sue alone at law in any case.

The estate and interest of the husband of the plaintiff, Mary F. Dawson, was not, and could not be, affected by the married woman's act, (April 10, 1869); it is true, the life estate to Ann Hardy did not fall in until after the passage of that act; but the estate to the devisees, the plaintiffs, was a vested estate in remainder from and after the death of the testator in 1842; the statute is not retroactive. Hart v. Dean, 2 Mac A., 60.

Mr. Justice Cox delivered the opinion of the court.

This was an action of ejectment. The material facts of the case are, that in making out title in ejectment, the plaintiffs relied upon a will executed by William Magill, in November, 1842, in which he says: "I devise to Ann Hardy part of lot one in square

nine hundred and seventy-five, together with all the improvements thereon, during her natural life, and at her decease I devise said property to my three grandchildren, Angelica Fowler, James William White, and Mary Francis White, them and their heirs forever." The testator died in the year following the making of his will, that is, in the year 1843, and the will was then admitted to probate. Ann Hardy, the life tenant, died in 1876. Just here it will be observed, that the title accrued originally to this plaintiff, Mary Francis White, now Dawson, by virtue of the will, as far back as 1843, before the passage of the Married Woman's Act of 1869, while it is true that she only got the property in possession in 1876, after the passage of the Married Woman's Act. But as the title was derived by her from this will in 1843, We think her rights in relation to the property are to be determined by the common law, and that the case does not come within the operation of the act of 1869. She and her co-tenants then instituted an action of ejectment, which is the case before us; and at the trial it appeared that Mary Francis Dawson, one of the plaintiffs, had a husband, and also children of the marriage, living; and the plaintiffs having rested their case, the defendant, by his counsel, moved the court to instruct the jury that the plaintiffs had shown themselves out of court, and not entitled to recover in the present action, because of the non joinder of the husband of the co-plaintiff, Mary Frances Dawson. The answer made to this by Mrs. Dawson is, that she was a joint tenant; that in case of her death the rights of the survivors would be paramount to any right as tenant by curtesy in her husband; that he is not entitled to curtesy in the property in which she is one of the parties interested, and has no interest in it, and therefore it is not necessary that he should join in the suit.

Now, all that may be very true, but there is really no question of tenancy by curtesy in the case. The husband would not become such until the death of the wife. But independently of any question of title by curtesy, the husband has a freehold in the wife's freehold property by the fact of marriage; he has the exclusive right to the possession, and rents and profits of it, and that is equivalent to a freehold during the coverture. It is an interest that his creditor can seize upon execution, and was so determined by this court in the case of *Bank v. Hitz*,\* and as is held in all the common law books. So that the husband, as a party in interest, has the exclusive right to the wife's freehold during coverture,

\*1 Mack., 111.

although it is held in joint tenancy. Consequently, the wife does show that the property which is claimed here is really, for the purposes of personal possession and enjoyment, in her husband, who is not a party to the suit. It is claimed that this objection should have been made by way of plea in abatement, and cannot be taken advantage of at the trial. If it was a mere question of personal capacity to sue, that would be so; the wife's coverture should be pleaded in abatement. But it is a question of title. At the trial of the case, when the claimants try to make out their title, they show one-third is in another party, and consequently they cannot recover. It is, therefore, appropriate to the general issue to show that the title claimed by one of the female plaintiffs is in her husband, and not in herself. We think, the court below was right in ruling that the plaintiffs had shown themselves out of court by this proof, and the judgment is therefore affirmed.

## United States Supreme Court.

No. 51.—OCTOBER TERM, 1882.

JAMES D. RUSSELL AND MARGARET C. GAVITT, Appellants,  
vs.

ANNE R. ALLEN, Executrix, and WILLIAM R. ALLEN and GEORGE W. ALLEN, Executors of THOMAS ALLEN, deceased.

*Appeal from the Circuit Court of the United States for the Eastern District of Missouri.*

William Russell, of St. Louis, "for the purpose of founding an institution for the education of youth in St. Louis county, Missouri," granted lands and personal property in Arkansas to John S. Horner and his successors, in trust "for the use and benefit of the Russell Institute of St. Louis, Missouri," with directions to the grantee to sell them, and to account for and pay over the proceeds "to Thomas Allen, President of the Board of Trustees of the said Russell Institute at St. Louis, Missouri," whose receipt should be a full discharge to the grantee. *Held*, That this was a charitable gift, valid against the donor's heirs and next of kin, although the institution was neither established nor incorporated in the lifetime of the donor or of Allen.

Mr. Justice GRAY delivered the opinion of the court.

This is a bill in equity, filed on the 16th of April, 1878, by two of the heirs at law and next of kin of William Russell, of St. Louis, against Thomas Allen, to establish a trust in favor of Russell's heirs at law and next of kin; and for an account.

The bill alleges that on the 19th of July, 1855, William Russell and John S. Horner

executed four indentures of trust, by each of which Russell, in consideration of one dollar paid, "and for divers other good and valuable considerations, but chiefly for the purpose of founding an institution for the education of youth in St. Louis county, Missouri," granted and conveyed to Horner, his executors and administrators or successors, in trust forever, certain lands and personal property in the State of Arkansas, to have and to hold the same unto him, his executors, administrators and successors, in trust, "to and for the following uses and purposes, to wit, the said property is conveyed for the use and benefit of the Russell Institute of St. Louis, Missouri;" and empowered and directed him and them to sell the same as soon as conveniently might be, and to account for and pay over the proceeds yearly or oftener, deducting the reasonable expenses of executing the trust, "to Thomas Allen, President of the Board of Trustees of the said Russell Institute at St. Louis, Missouri, and his receipt therefor shall be a full discharge of the said party of the second part for the amount so paid and the application thereof;" and Horner's trust to be brought to a close and the net proceeds paid over as soon as conveniently might be, and if not concluded within ten years, the property remaining undisposed of to be sold by public auction and the proceeds paid over as before required. In each of the four indentures reference was made to the three others, and it was "declared that all of said conveyances, including this, are made to one and the same person for one and the same use and purpose, and that the same are, and are to be deemed and taken and accounted for as one trust, according to the conditions of the deeds respectively, it having been intended by said deeds and this present one to convey all of the remaining property of the said William Russell, in the said State of Arkansas, to the said party of the second part, to and for the use and benefit of the said Russell Institute of St. Louis, Missouri." After this clause, in one of the indentures, were added the words, "represented by their president as aforesaid." Each indenture contained a covenant by Horner "faithfully to perform the trust hereby created."

The bill further alleges that Horner, in the execution of his trust, has converted a large portion of the property into money; has paid over to Allen the sum of about \$50,000, and has conveyed and transferred to Allen the property remaining unsold, and that Allen holds and controls the whole fund, and has never applied to any court for aid in the disposition and application thereof, and has in

no way used or recognized the fund as held by him in trust for the uses declared by Russell.

The bill further alleges that there was not at the time of the execution of the indentures aforesaid, nor before or since, any such educational institution as was referred to therein; that at the time of such execution Russell was from paralysis infirm in body and weak in mind, and that, while he then manifestly proposed to found such an institution, yet in his increasing incapacity of body and mind during the short period that intervened between that time and his death he failed to accomplish his philanthropic purpose; that he died in 1856 without ever having founded such an institution, or delegated to Horner or to Allen, or to any other person or corporation, authority to organize a Russell Institute, and that no such authority has hitherto been exercised or claimed by any person or corporation, and there is and has been no donee capable of receiving, holding and administering the trust fund created by the indentures; that the beneficiaries of the trust, so far as can be determined by the terms of the indentures, are uncertain and indefinite, and the trust is invalid, and, there being no debts outstanding against Russell's estate, the trust fund belongs to his next of kin.

To this bill Allen filed a general demurrer, which was sustained, and the bill dismissed. (5 Dillon, 235.) The plaintiffs appealed to this court. Pending the appeal, Allen has died, and his executors have been made parties in his stead.

The deeds of gift state that they are made "chiefly for the purpose of founding an institution for the education of youth in St. Louis county, Missouri;" they convey the property to Horner and his successors in trust "for the use and benefit of the Russell Institute of St. Louis, Missouri;" they direct him to sell the property and account for and pay over the proceeds "to Thomas Allen, President of the Board of Trustees of the said Russell Institute of St. Louis, Missouri," whose receipt shall be a full discharge of Horner; and they end by declaring that all these conveyances shall be deemed taken and accounted for as one trust, and that it is the intention of the donor to convey the property included in all of them "to and for the benefit of the said Russell Institute of St. Louis, Missouri," to which one of the deeds adds, "represented by their president as aforesaid."

The donor thus clearly manifests his purpose to found an institution for the education of youth in St. Louis, to be called by his name; and he executes this purpose by con-

veying the property to Horner in trust, to hold and convert into money and pay that money to the officers of the institute when incorporated and a board of trustees appointed. The direction to pay the money to Allen, as president of the board of trustees, and the mention, at the close of one of the deeds, of the institute as represented by its president as aforesaid, clearly show that the fund is not to be paid to Allen individually; and while they imply the donor's wish that Allen should be the first president of the board of trustees of the institute, they do not make his appointment to and acceptance of that office a condition of the validity of the gift or of the carrying out of the donor's charitable purpose. The terms of the deeds clearly show that the donor did not contemplate or intend doing any further act to perfect his gift. It is not pretended that the allegations in the bill as to his weakness of body and mind amount to an allegation of insanity, and they are irrelevant and immaterial.

The principal grounds upon which the plaintiffs seek to maintain their bill are that the deeds create a perpetuity; that the uses declared are not charitable; and that, if the uses are charitable, there are no ascertained beneficiaries and no donee capable of assuming and administering the trust, and the uses are too indefinite to be specifically executed by a court of chancery. But these positions, as applied to the facts of the case, are inconsistent with the fundamental principles of the law of charitable uses, as established by the decisions of this and other courts exercising the ordinary jurisdiction in equity.

By the law of England from before the Statute of 43 Eliz. c. 4, and by the law of this country at the present day, (except in those States in which it has been restricted by statute or judicial decision, as in Virginia, Maryland, and more recently in New York.) trusts for public charitable purposes are upheld under circumstances under which private trusts would fail. Being for objects of permanent interest and benefit to the public, they may be perpetual in their duration, and are not within the rule against perpetuities; and the instruments creating them should be so construed as to give them effect if possible, and to carry out the general intention of the donor, when clearly manifested, even if the particular form or manner pointed out by him cannot be followed. They may, and indeed must, be for the benefit of an indefinite number of persons; for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness, which is one characteristic of a legal charity. If the

founder describes the general nature of the charitable trust, he may leave the details of its administration to be settled by trustees under the superintendence of a court of chancery; and an omission to name trustees, or the death or declination of the trustees named, will not defeat the trust, but the court will appoint new trustees in their stead.

The previous adjudications of this court upon the subject of charitable uses go far towards determining the question presented in this case. As the extent and effect of these adjudications have hardly been appreciated, it will be convenient to state the substance of them.

The case of Baptist Association v. Hart, 4 Wheat., 1, in which a bequest by a citizen of Virginia "to the Baptist Association that for ordinary meets at Philadelphia annually," as "a perpetual fund for the education of youths of the Baptist denomination who shall appear promising for the ministry," was declared void, was decided upon an imperfect survey of the early English authorities, and upon the theory that the English law of charitable uses, which, it was admitted, would sustain the bequest, had its origin in the Statute of Elizabeth, which had been repealed in Virginia. That theory has since, upon a more thorough examination of the precedents, been clearly shown to be erroneous. *Vidal v. Girard*, 2 How., 127; *Perin v. Carey*, 24 How., 465; *Ould v. Washington Hospital*, 95 U. S., 303. And the only cases in which this court has followed the decision in Baptist Association v. Hart have, like it, arisen in the State of Virginia, by the decisions of whose highest court, charities, except in certain cases specified by statute, are not upheld to any greater extent than other trusts. *Wheeler v. Smith*, 9 How., 55; *Kain v. Gibboney*, 101 U. S., 362.

In *Beatty v. Kurtz*, 2 Pet. 566, the owners of a tract of land (afterwards part of Georgetown) laid it out as a town, and made and recorded a plan of it, marking one lot as "for the Lutheran Church;" and the Lutherans of the town, a voluntary society not incorporated, erected and used a building upon this lot as a church for public worship, and fenced in and used the land as a church yard, for the burial of others as well as of Lutherans, for fifty years. Upon these facts, it was held that the Bill of Rights of Maryland, affirming the validity of any sale, gift, lease or devise of land, not exceeding two acres, for a church and burying ground, recognized, to this extent at least, the doctrine of charitable uses, under which no specific grantee or trustee was necessary; that this land had been dedicated to a charitable and pious use, beneficial to the in-

habitants generally, which might at all times have been enforced through the intervention of the government as *parens patrie*, by its Attorney General or other law officer; and that a committee of the society might maintain a bill in equity to restrain by injunction the heirs of the original owners from disturbing that use.

In *Inglis v. Sailors' Snug Harbor*, 3 Pet. 99, a citizen of New York devised land to the chancellor of the State, the mayor of the city, and others, designating them all by their official titles, only, and to their respective successors, in trust, out of the rents and profits to build a hospital for aged, decrepid and worn-out sailors, as soon as the trustees should judge that the proceeds would support fifty such sailors, and to maintain the hospital and support sailors therein forever; and further declared it to be his will and intention, that if this could not be legally done without an act of incorporation, the trustees should apply to the legislature for such an act, and that the property should at all events be forever appropriated to the above uses and purposes. An act incorporating the trustees was passed and the hospital was established. A majority of the court held that the trustees took personally and not in their official capacities, and that upon their incorporation the legal title vested by way of executory devise in the corporation as against the heirs-at-law; and the dissenting judges differed only as to the legal title, and not as to the validity of the charitable trust.

In *McDonogh v. Murdoch*, 15 How., 367, a citizen of Louisiana, declaring his chief object to be the education of the poor of the cities of New Orleans and Baltimore, made a devise and bequest to the two cities, one half to each, the income to be applied by boards of managers, who should be appointed by either city, but whose powers and duties he defined, and who should obtain acts of incorporation, if necessary, for the education of the poor and other charitable purposes, in various ways specified. And in case the two cities should combine together and knowingly and wilfully violate the conditions, then he gave the whole property to the States of Louisiana and Maryland, in equal halves, "for the purpose of educating the poor of said States under such a general system of education as their respective Legislatures shall establish by law." The court held that the devise to the cities was valid, and that the testator's directions as to the management of the income "must be regarded as subsidiary to the general objects of his will, and whether legal and practicable, or otherwise, can exert no influence over the

question of its validity;" and expressed the opinion that the failure of the devise to the cities would not have benefited the heirs at law, for in that event the limitation over to the States of Louisiana and Maryland would have been operative. 15 How., 404, 415.

In *Fontain v. Ravenel*, 17 How., 369, a testator, residing at the time of his death, in Pennsylvania, appointed his wife and three others to be executors of his will and authorized his executors or the survivor of them, after the death of his wife, to dispose of the residue of his estate "for the use of such charitable institutions in Pennsylvania or South Carolina as they or he may deem most beneficial to mankind, and so that part of the colored population in each of the said States of Pennsylvania and South Carolina shall partake of the benefits thereof." In that case, the testator had not himself defined the nature of the charitable uses, nor authorized any one but his executors to designate them; and the point decided was that, they having all died without doing so, the Circuit Court of the United States for the District of Pennsylvania could not sustain a bill to establish them, filed by charitable institutions in Pennsylvania and South Carolina in the name of the administrator *de bonis non* and next of kin of the testator. The question there was, whether the authority of a court of chancery, under such circumstances, belonged to its ordinary jurisdiction over trusts, or to its prerogative power under the sign manual of the crown, which last has never been introduced into this country. See *Boyle on Charities*, 238, 239; *Jackson v. Phillips*, 14 Allen, 539, 576, 588. No question of the validity of the gift as against the next of kin was presented; and even Chief-Justice Taney, who, differing from the rest of the court, alone asserted that "if the object to be benefited is so indefinite and so vaguely described that the bequest could not be supported in the case of an ordinary trust, it cannot be established in a court of the United States upon the ground that it is a charity," distinctly admitted that a suit by an heir or representative of the testator to recover property or money bequeathed to a charity could not be maintained in a court of the United States if the bequest was valid by the law of the State. 17 How. 395, 396. Accordingly, in *Lorings v. Marsh*, 6 Wall., 387, the court dismissed a bill by the next of kin to set aside a bequest by a citizen of Massachusetts in trust for the benefit of the poor, by means of such incorporated charitable institutions as should be designated by three persons appointed by the trustees or their successors; such a bequest being valid

under the law of Massachusetts as habitually administered in her courts.

In *United States v. Fox*, 94 U. S., 315, this court, affirming the judgment of the Court of Appeals of New York in 52 N. Y., 530, held a devise of land in New York to the United States, for the purpose of assisting to discharge the debt contracted by the war for the suppression of the Rebellion, to be invalid, solely because by the law of New York, as declared by recent decisions of the Court of Appeals, none but a natural person, or a corporation created by that State with authority to take by devise, could be a devisee of land in that State. Where not prohibited by statute, a devise or bequest for such a purpose is a good charitable gift. *Nightingale v. Goulburn*, 5 Hare, 484, and 2 Phillips, 594; *Dickson v. United States*, 125 Mass., 311.

In *Ould v. Washington Hospital*, 95 U. S., 303, a citizen of Washington devised land in the District of Columbia to two persons named, in trust to hold it "as and for a site for the erection of a hospital for foundlings," to be built by a corporation to be established by act of Congress and approved by the trustees or their successors, and, upon such incorporation, to convey the land to the corporation in fee. It was contended for the heirs at law that the devise was void, because it was to a corporation to be established in the future, and might not take effect within the rule against perpetuities, and because of the uncertainty of the beneficiaries; and reference was made to the Maryland Statute of Wills of 1798, still in force in the District of Columbia, providing that no will should "be effectual to create any interest or perpetuity, or make any limitation, or appoint any uses, not now permitted by the constitution or laws of the State," and to a series of decisions in Maryland, holding that the Statute of Elizabeth was not in force in that State, and that charitable uses were there governed by the same rules as private trusts. But those decisions having been made since the separation of the District of Columbia from the State of Maryland, the court held that the case must be determined upon general principles of jurisprudence, and that the devise was valid.

The objection to the validity of the gift before us, as tending to create a perpetuity, is fully met by the cases of *Inglis v. Sailor's Snug Harbor*, *McDonogh v. Murdoch*, and *Ould v. Washington Hospital*, above cited, which clearly show that a gift in trust for a charity not existing at the date of the gift, and the beginning of whose existence is uncertain, or which is to take effect upon a con-

tingency that may possibly not happen within a life or lives in being and twenty-one years afterwards, is valid, provided there is no gift of the property meanwhile to or for the benefit of any private corporation or person. Those cases are in accord with English decisions of the highest authority, of which it is sufficient to refer to the leading case of *Downing College*, reported under the name of *Attorney General v. Downing* in *Wilmot*, 1 Dickens, 414, and *Ambler*, 550, 571, and under the name of *Attorney General v. Bowyer* in 3 Ves., 714, 5 Ves., 300, and 8 Ves., 256, and to the recent case of *Chamberlayne v. Brockett*, L. R., 8, ch. 206. See also *Sanderson v. White*, 18 Pick., 328, 336; *Odell v. Odell*, 10 Allen, 1.

That the gift is for a charitable use cannot be doubted. All gifts for the promotion of education are charitable, in the legal sense. The Smithsonian Institution owes its existence to a bequest of James Smithson, an Englishman, "to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men." See Acts of Congress, of 1st July, 1836, c. 252; 10th August, 1846, c. 178. This was held by Lord Langdale, Master of the Rolls, in *United States v. Drummond*, decided in 1838, to be a good charitable bequest. The decision on this point is not contained in the regular reports, but appears by the letters of Mr. Rush, then Minister to England, (printed in the Documents relating to the Origin and History of the Smithsonian Institution, published by the Institution in 1879,) to have been made after full argument in behalf of the United States by Mr. Pemberton (afterwards Mr. Pemberton Leigh and Lord Kingsdown), and on deliberate consideration by the Master of the Rolls. History of Smithsonian Institution, 15, 19, 20, 56, 58, 62. And it was cited as authoritative in *Whicker v. Hume*, 7 H. L. Cas., 124, 141, 155, in which the House of Lords held that a bequest in trust to be applied, in the discretion of the trustees, "for the benefit and advancement and propagation of education and learning in every part of the world, as far as circumstances will permit," was a valid charitable bequest and not void for uncertainty.

"Schools of learning, free schools and scholars in universities," are among the charities enumerated in the Statute of Elizabeth; and no trusts have been more constantly and uniformly upheld as charitable than those for the establishment or support of schools and colleges. *Perry on Trusts*, §700. That the gift "for the purpose of founding an institution for the education of youth in St. Louis County,

Missouri," to be managed by a board of trustees, is sufficiently definite, is shown by the decisions of this court in *Perin v. Carey* and *Ould v. Washington Hospital*, above cited, as well as by that of the House of Lords in *Dundee Magistrates v. Morris*, 3 Macq., 134.

The law of Missouri, as declared by the Supreme Court of that State, sustains the validity of this gift. In *Chambers v. St. Louis*, 29 Missouri, 543, a devise and bequest to the city of St. Louis, in trust "to be and constitute a fund to furnish relief to all poor emigrants and travellers coming to St. Louis on their way to *bona fide* settle in the West," which was objected to for indefiniteness in the object, as well as for want of capacity in the trustee to take, was held to be valid. And in *Schmidt v. Hess*, 60 Missouri, 591, a grant of a parcel of land to the Lutheran Church for a burial ground was held to be a valid charitable gift, which equity would execute by compelling a conveyance to the trustees of a church which was proved to be the church intended by the testator, although it was not incorporated at the time of the gift. We have been referred to nothing having any tendency to show that the law of Arkansas, in which the lands granted lie, is different.

The money paid and the lands conveyed by Horner to Allen stand charged in the hands of Allen and his executors with the same charitable trust to which they were subject in the hands of Horner.

Steps to organize such an institution as is described in the deeds may be taken either by the attorney general or other public officer of the State, or by individuals. Whenever an institute for the education of youth in St. Louis shall have been incorporated, and shall claim the property, it will then be a matter for judicial determination in the proper tribunal whether it meets the requirements of the gift. The only question now presented is of the validity of the gift as against the donor's heirs at law and next of kin.

Decree affirmed.

GENTLEMEN, I won't deceive you about that storm. I'll draw it very mild. There were things about it that you might not believe. Those details I will leave out. But you can get some idea of how it rained when I tell you that we put out a barrel without any heads into it, and it rained into the bunghole of that barrel faster than it could run out at both ends.

THEY begin by being fools, and end in being knaves.—DESHOUILLIERES.

## Land Department.

Furnished by SICKELS & RANDALL.  
Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

### Limestone and Minerals.

#### MAXWELL v. BRIERLY.

Land more valuable for its deposits of limestone than for agriculture is mineral land, and subject to sale under the mineral laws.

List of substances that may render lands mineral in character.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,

April 16th, 1883.

The Commissioner of the General Land Office:

SIR: I have considered the case of *J. A. Maxwell v. John Brierly*, involving the S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 36, Tp. 1, R. 71, Central City, Colorado, on appeal by Maxwell from your decision of August 16, 1880, adjudging it to be agricultural in character.

It appears that the tract was returned as mineral by the surveyor-general, and was withdrawn as such by your letter of November 14, 1876. Upon petition of Brierly (claiming it to be agricultural in character) it was advertised and sold to him by the superintendent of schools for the county in which it is located. Shortly thereafter the superintendent notified him of the refusal of the State authorities to confirm the sale, or to take any jurisdiction over the tract so long as the surveyor-general's return remained unchanged; and he was tendered the purchase money he had paid, which he refused to accept. He then applied for a hearing to enable him to show its agricultural character, which you allowed him. The testimony shows that the tract has little agricultural value; that it lies chiefly upon a precipitous mountain-side; that less than thirty acres—and these constituting several distinct parcels—are susceptible of cultivation or irrigation; and that its chief value consists in a limestone ledge, the stone of which is used as a flux in neighboring smelting works and for making into lime.

It also appears that Maxwell filed a mineral claim for the tract as a valuable limestone deposit, under an alleged discovery of November 18, 1878, and a location February 5, 1879, and that Brierly also filed a like claim (notwithstanding his allegation that the tract was agricultural), under an alleged discovery of February 6th, and a location February 8, 1879.

Your decision holds, under that of Commissioner Williamson in the case of "*Kaweah Limestone Ledge*" (Copp's Mineral Decisions, 297), that land chiefly valuable for limestone



is not subject to entry under the mining laws, and therefore adjudges the tract in question to be agricultural, notwithstanding the ruling of Commissioner Burdett in the case of Rolfe (Copp, August, 1875), that where land was more valuable on account of limestone than for purposes of agriculture, it may be patented under these laws. Your decision was also prior to that of my predecessor, who held, October 8, 1881, in the case of Hooper (Copp, November, 1881), in accordance with your circular instructions of July 15, 1873, that whatever is recognized as a mineral by standard authorities, and is found in such quantity and quality as to render the land more valuable on this account than for agriculture, was "a valuable mineral deposit" within the purview of the act of May 10, 1872, and hence that gypsum and limestone so found subjected the tract to the operation of the mining laws, as has been held under other rulings, with respect to asphaltum, borax, auriferous cement, fire clay, kaolin, mica, marble, petroleum, slate, and other substances, under like conditions.

Concurring in these views, I am of the opinion that the tract in question is, under the testimony, more valuable for its limestone than for agricultural purposes, and hence is subject to entry under the mineral laws. I reverse your decision.

Very respectfully,

H. M. TELLER,  
Secretary.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

JUNE 4, 1883.

Albert H. Harding, Harvey S. Durnall, Emma M. Gillett, Lennars L. Burton, C. B. Anderson, Paul Arnold, Frank P. Martin and Lendley Fogg were admitted to practice.

JUNE 5, 1883.

Citizens National Bank v. Chas. E. Fanning et al. Appeal dismissed.

The Fifth Baptist Church v. The Balt. & Pot. R. R. Co. Judgment satisfied and petition dismissed.

Ex parte The Capitol, North O St. & S. Wash. R. R. Co. Terms of decree settled.

Eugene Heller et al. v. John B. Blake et al. Mandate of S. C. U. S. returned dismissing decree. Execution ordered against complainants.

James Green and Charles L. Hine appointed examiners.

James J. Brown, Martin R. Thorp, and Charles T. Moore were admitted to practice.

### EQUITY COURT.—Justice James.

MAY 15, 1883.

Willard v. Wylie. Referred to auditor.  
Purdy v. Young. Sale of lots confirmed.

Risdon v. Norton. Commissioner's report confirmed.

Fitzmorris v. Moran. Time to take testimony limited.

Mackall v. Mackall. Same.

Mason v. Mason. Appearance of absent defendants ordered.

Duvall v. Mitchell. Same.

O'Donoghue v. Dale. Restraining order discharged, &c.

MAY 16, 1883.

Worthington v. Randall. Appearance of absent defendant ordered.

McDonald v. McDonald. Allimony penden lite, &c., ordered.

Chester v. Chester. Divorce a vin. mat. granted.

Willey v. Willey. Same.

Selke v. Peck. Sale confirmed, &c.

Baxter v. Wheeler. Contract of sale confirmed.

MAY 17, 1883.

Howser v. Farnun. Guardian ad litem appointed.

O'Hara v. Walker. Same.

In re Charles E. Gibbs. Reference to auditor.

Barber v. Gilmore. Testimony before examiner ordered taken.

Speer v. Coyle. Party allowed to file cross-bill.

Middleton v. Middleton. Commission to get answer of infant defendants ordered to issue.

MAY 18, 1883.

Sage v. Sage. Auditor's report confirmed, &c.  
Marr v. Barry. Pro confesso against certain defendants.

Riley v. Cox. Same.

MAY 19, 1883.

Burns v. Cochran. Sale finally ratified, &c.

Tollin v. Golden. Testimony before examiner ordered taken.

Vincent v. Vincent. Time to take testimony limited.

Hoover v. Marr. Motion to rescind decree overruled.

Speer v. Coyle. Leave granted to file supplemental bill.

MAY 21, 1883.

Neenan v. Neenan. Guardian ad litem appointed.

Looney v. Quill. Leave to file exception to auditor's report on conditions.

Ware v. Ware. Divorce a vin. mat. granted.

Hampton v. Hampton. Leave to proceed at law granted.

MAY 22, 1883.

Power v. Power. Auditor's report confirmed.

Wash. & Alex. Mine Co. v. Carrington. Time limited to take testimony.

Lazenby v. Lazenby. Surrender of policy ordered.

Yeabower v. Kengla. Decree modified.

Byrne v. Byrne. Rule on defendant granted.

Shoemaker v. Shoemaker. Guardian ad litem appointed.

Cocker v. Ryan. Writ of ne exeat against Thompson ordered.

In re Wm. H. Zepp, lunatic. Investment of funds authorized.

Marks v. Main. Leave to amend bill.

Shoemaker v. Shoemaker. Sale ordered and trustee appointed to sell.

Ensor v. Ensor. Divorce a vin. mat. granted.

Jackson v. Davis, adm'r. Testimony ordered taken.

Bayley v. Bayley. Decree partly vacated.  
In re Chas. E. Gibbs. Decree of Orphans' Court approved.

MAY 23, 1883.

Moore v. Harrison. Record corrected nunc pro tunc.

Weggeman v. Weggeman. Commission to get answer of infants ordered to issue.

Dodge v. Davis. Sale ratified finally.

Clark v. Selbert. Sale ratified nisi.

Ourand v. Ourand. Same.

York v. Main. Party allowed to become defendants.

Shoemaker v. Shoemaker. Amendment to decree ordered.

Cypert v. Green. Rule on defendant Myers and complainant ordered.

MAY 24, 1883.

Foster v. Foster. Pro confesso and testimony before examiner ordered taken.

Vincent v. Vincent. Testimony by commission ordered taken.

Fitzmorris v. Moran. Leave to file amended and supplemental bill granted.

Phoenix Mut. Ins. Co. v. Grant. Writ of assistance, &c., ordered.

Barber v. Frelinghuysen. Injunction denied, &c.

Shoemaker v. Campbell. Sale ordered and trustees appointed to sell.

Oertley v. Oertley. Same.

Thompson v. Arnold. Sale ratified nisi.

Yeabower v. Kengla. Same.

MAY 25, 1883.

Follin v. Golden. Sale ordered and trustee ordered to sell.

Turton v. Saunders. Referred to auditor.

Hall v. Hollidge. Pro confesso against certain defendants.

Beckman v. Beckman. Divorce a vin. mat. granted.

#### CIRCUIT COURT.—Justice Mac Arthur.

MAY 25, 1883.

McDaniel v. Parish. Judgment on stipulation.

Jackson & Co. v. Conrads. Referred to auditor.

Wall v. Kilbourn. Suit dismissed.

Plater v. Williams. Same.

Chesley v. Dale. Verdict for plaintiff one cent damages.

Crandall's Administrator v. District of Columbia. Verdict for defendant.

Lingerfield et al. v. Hubbell. Judgment by default.

Garland v. Garland et al. Suit dismissed.

MAY 26, 1883.

Edmondson et al. v. Gilbert et al. Order to produce documents.

State of Virginia v. Ridgway. Demurrer to declaration overruled and time given to plead.

Bower v. Pickerd. Demurrer sustained as to second count and overruled as to others.

Fendall, agt., v. Albers. Demurrer to declaration sustained and judgment.

Main v. Bonafant. Demurrer to plea sustained and leave to answer.

MAY 28, 1883.

Hunter v. Brown et al. Verdict. Answers to one and two in the affirmative to three in the negative.

Sherwood et ux. v. District of Columbia. Verdict for defendant.

Anderson v. Smith. Plaintiff to pay \$25 or suit to be dismissed.

MAY 29, 1883.

Clarke v. District of Columbia. Verdict for plaintiff for \$4,200.

Gibbs v. Mattison. Time to plead extended.

Gibson v. Pollok. Verdict for plaintiff for \$470.85.

JUNE 1, 1883.

Anderson v. Smith. Time to pay extended.

Thomas v. Turner et al. Suit dismissed.

McBride v. Fleishell. Verdict for possession and \$28.

#### CRIMINAL COURT.—Justice Wylie.

JUNE 8, 1883.

R. J. Merrick, counsel for the Government, finished the closing argument in the case of U. S. v. Dorsey et al. The jury were excused until June 12.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

JUNE 1, 1883.

24511. Charles J. Baur v. Rev. John McNally et al. Account, \$300. Plffs atty, N. H. Miller.

24512. John M. Daly v. Clayton McMichael. Replevin. Plffs atty, J. A. Smith. Defts atty, L. Tobriner.

JUNE 2, 1883.

24513. Galm E. Green v. Jesse B. Cypert. Damages, \$10,000. Plffs attys, Elliot and Willson.

24514. Louisa P. Shoemaker v. George Staffaen. Issues from probate. Plffs attys, Hanna & Johnson.

24515. William Winaas v. George W. Goodall. Appeal. Plffs atty, B. F. Leighton.

JUNE 4, 1883.

24516. John Kein & Co. v. Robt. E. Talbott. Account, \$252.26. Plffs atty, H. W. Garnett.

JUNE 7, 1883.

24517. Frank J. Tibbets v. Albert P. Morrow. Notes, \$250.52. Plffs atty, F. P. B. Sands.

JUNE 8, 1883.

24518. John T. Mitchell v. Letitia P. Cake. Notes and account, \$334.70. Plffs atty, F. W. Jones.

24519. Same v. Ursula H. Lincoln. Account, \$305.42. Plffs atty, F. W. Jones.

#### IN EQUITY.—New Suits.

JUNE 4, 1883.

5588. Joseph D. Allen et al. v. Joseph Mather et al. Injunction. Com. sol., W. E. Earle.

5589. George Callaghan v. Mary J. English et al. To sell infants' real estate. Com. sol., John A. Clarke.

JUNE 5, 1883.

5590. John M. Rogers v. Wm. McE. Dye. Injunction. Com. sols., Hunton & Chandler.

5591. Chapin Brown v. John Butler et al. Com. sol., F. Beall.

5592. John H. Inradella v. John F. Bulger et al. To annul will. Com. sols., Ross & Dean.

JUNE 6, 1883.

5593. Chas. W. Proctor v. Mary R. Proctor. For divorce. Com. sol., W. Wheeler.

JUNE 7, 1883.

5594. John H. Lewis v. Julia T. Lewis. Com. sol., J. A. Smith.

#### PROBATE COURT.—Justice James.

MAY 24, 1883.

Estate of Louisa Wagner; will filed for probate.

Estate of Sarah Hammond; inventory returned by administrator.

Estate of Joseph Reese; will admitted to probate and letters granted.

Estate of Charles B. Boynton; will admitted to probate; letters granted and executors bonded.

Estate of Michael Barrett; executrix bonded and qualified.

Justice James presiding.

MAY 26, 1883.

In re estate of Wm. B. Russell; order to dismiss petition.

Will of Sarah Berry; filed and fully proved, admitted to probate and letters granted.

In re Albert C. Prather, guardian; appointed and bonded. Codicil of Geo. A. Springman, deceased, filed.

Estate of James Sawyer; assent of heirs filed, will admitted to probate, letters granted, &c.

Estate of Jeannie O'Connor; petition and order admitting will to probate and letters granted, &c.

Estate of Sarah W. Parrie; will admitted to probate, letters granted, &c.

In re Wm. A. Bristow, guardian; answer of guardian filed.

In re estate of Timothy Sullivan; answer of heirs filed, will admitted to probate and letters granted to executor, &c.

Estate of Hannah C. Wentz; executors exonerated from returning inventory.

Estate of Anthony Bachly; investment ratified.

Will of Samuel Magee; filed with petition for probate, letters granted and publication ordered.

In re estate of Clark Mills; caveators made plaintiffs and widow and Eva S. Mills Howell defendants.

Estate of R. Tennent Shaw; settlement of judgment ordered.

Estate of Anthony M. Dutch; will fully proved.

Charles P. Culver, guardian; allowed to encumber estate.

Estate of Maria Robinson; funds in hands of administrator ordered to be distributed.

Ann Tierney, guardian; appointed and qualified.

Estate of John J. F. Joachim and Louise Joachim; citation served and time extended to answer.

Estate of Susan Falconer; petition of parties to be appointed administrators granted; parties bonded as administrators.

James Campbell, guardian; appointed and bonded.

Albert Harper, guardian; appointed and bonded.

Estate of Wm. H. St. John; assent of heirs, administratrix bonded and qualified.

Estate of Charles A. Boynton; executors bonded and letters granted.

Estate of Garrett Barry, jr.; final account of administrator passed.

Bridget Cullinane et al., guardian; 16th account passed.

Estate of Mary A. Devlin; final account of administrator passed.

Estate of Wm. H. Phillip; second account of administrator passed.

Estate of Benj. F. Maxwell; first account of administrator passed.

Isaac N. Cary, guardian; bonded as guardian.

Estate of Jeannie O'Connor; approval of sureties filed, &c.

Chas. E. Gibbs, guardian; copy of decree filed.

Estate of Noble Young; proof of service of notice for commission to prove will filed.

Will of Ezekiel Hughes; filed and proved by two witnesses.

Estate of Francis A. Ashford; surety signed bond in blank for executrix.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Oscar H. Lackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

OLARA C. LACKEY, Executrix,

JAS. H. SAVILLE, Solicitor.

23-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benjamin F. Gridley, late of Providence, Rhode Island, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of June, 1883.

JAMES H. GRIDLEY, Administrator.

23-6

### Legal Notices.

The S. L. Mining Co. of W. Va., will hold their first meeting at the residence of the President of the Co., June 23d at 7:30 p. m.

23-3

A. P. STEWARD, Secretary.

CHANCERY SALE OF VALUABLE UNIMPROVED PROPERTY ON THE EAST SIDE OF FOURTEENTH (14th) street northwest, between N street and Rhode Island Avenue, and on south side of Rhode Island Avenue, between thirteenth (13th) and fourteenth (14th) streets.

#### EXCELLENT OPPORTUNITY FOR CAPITALISTS! A CHANCE FOR A GOOD INVESTMENT!

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the twenty-first (21st) day of December, 1882, in Equity cause No. 7,672, Equity docket No. 21, we will offer for sale, by public auction, in front of the premises, on MONDAY, June the eighteenth (18th), 1883, at five (5) o'clock p. m., lots four (4), six (6) and eight (8), of Heilmuller's recorded subdivision of square numbered two hundred and forty-two (242), in the city of Washington, D. C., according to the sub-division of the said lots four (4), six (6) and eight (8), which the court by its order passed in said cause, has authorized us as trustees to make, and which sub-division is as follows: lot four (4) into three lots, each fronting twenty-two (22) feet and eight (8) inches on Fourteenth (14th) street; lot six (6) into three lots, each fronting twenty-two (22) feet and eight (8) inches on Fourteenth (14th) street—all of said sub-divisional lots to be bounded by the rear line of the present lots, and the sub-division of said lots four (4) and six (6) to be made by parallel lines at right angles with Fourteenth street; lot eight (8), fronting on Rhode Island Avenue, to be subdivided into three lots of equal length and fronting on Rhode Island Avenue, the one bounding on the alley to be twenty-six (26) feet wide and the other two each twenty-one (21) feet in width. By this sub-division we make in all nine (9) lots for sale, each of which is an eligible site for building purposes.

The terms of sale as prescribed by the decree of the court are: One-third cash, and the residue in one and two years from day of sale, with interest from day of sale, or all cash, at option of the purchaser. The deferred payments of any purchase money are to be secured by withholding deed or by taking mortgage or deed of trust on property sold. All unpaid taxes and assessments are to be paid out of the proceeds of sale. If these terms of sale be not complied with within six (6) days a resale will be made at cost and risk of the delinquent purchaser. A deposit of two hundred dollars (\$200) on each lot will be required by trustees on acceptance of bid. By the decree the trustees are empowered to postpone the sale from day to day in case all the property be not sold on the day advertised. All conveyancing is to be at purchaser's cost.

GEORGE F. APPLEBY,  
WILLIAM E. EDMONSTON, } Trustees.

Offices, 420 5th street, northwest.

THOS. E. WAGGAMAN, Auctioneer.

23-1

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Fisher A. Foster, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day June, 1883.

WILLIAM B. SNELL, Executor.

B. F. LEIGHTON, Solicitor.

23-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of Freehold, New Jersey, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Howell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber or his solicitor, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

WILLIAM S. THROCKMORTON, Administrator.

C. D. FOWLER, Solicitor, 505 D street, n. w.

23-3

*Legal Notices.***CLERK'S OFFICE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. May 31, 1883.**

I certify that Dorsey E. W. Carter, has filed in the Supreme Court of the District of Columbia, a petition praying that he may have his name of Dorsey E. W. Carter, changed to Dorsey E. W. Towson, alleging as his reasons for filing the same that Dorsey E. W. Towson, is his real and proper name, which was changed during his minority, and he desires to resume the name of his ancestors.

Witness my hand and the seal of said court this 31st day of May, 1883.

23.3 R. J. MEIGS, Clerk,  
By M. A. CLANCOY, Assistant Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Abby L. Bodfish, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1883.

23.3 F. D. SEWALL, Administrator.  
J. W. & GEO. L. DOUGLASS, Solicitors.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 4, 1883.**

In the case of William H. Young, Executor of James A. Barr, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.  
23.3 SAM'L C. MILLS, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Washington, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

23.3 CHARLES R. KENGLA, Administrator.  
CARUSI & MILLER, Solicitors.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John S. Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

23.3 BERTHA HOPKINS, Administratrix.  
HINE & THOMAS, Solicitors.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Dilley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

23.3 G. W. OLARK, Administrator.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Berry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1883.

23.3 OHAS. H. ORAGIN, Jr., Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.

23.3 NOBLE JOHNSON, Executor.  
GEO. F. GRAHAM, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Timothy Sullivan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

23.3 RICHARD E. ORAWFORD, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis A. Ashford, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

23.3 ISABELLA W. ASHFORD, Executrix.  
GEO. F. APPELEY, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George W. Collins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1883.

23.3 ALICE COLLINS, Executrix.  
W. B. WEBB, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 6, 1883.**

In the case of Julia T. Scott, Executrix of Gustavus H. Scott, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.

23.4 JAMES G. PAYNE, Solicitor.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5, 1883.**

In the matter of the Will of Sarah H. B. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: 23-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, June 7th, 1883.**  
**FRANCIS D. SHOEMAKER ET AL. } No. 8,431. Eq. Doc. 23.**

**EDWARD SHOEMAKER ET AL. }**

It is by the court, this 7th day of June, 1883, ordered that the offer to purchase the real estate in said cause mentioned made by William M. Galt, and reported by Charles H. Oragin, Jr., and William A. Gordon, trustees, be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 9th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 9th day of July, 1883. The report states the amount offered to be \$10,600.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. June 6, 1883.**  
**CHARLES W. PROCTOR } No. 8,593. Equity Docket 23.**

**MARY E. PROCTOR. }**

Notice of the pendency of the petition for divorce in the above entitled cause is hereby given to the defendant; and it is ordered that the defendant cause her appearance to be entered herein on or before the commencement of the term occurring forty days after this day, otherwise the court will proceed to hear and determine said cause.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Emily Johnson, formerly of Frederick, Md., late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by John H. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**WORTHINGTON & HEALD, Solicitors.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 25, 1883.**

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Bergman and Laura Magee.

All persons interested are hereby notified to appear in this Court on Monday, the 26th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: 23-3 **H. J. RAMSDELL, Register of Wills.**

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Susan Falconer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next: they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 28th day of May, 1883.

**JAMES CAMPBELL,**  
**MICHAEL C. WEAYER,**  
Administrators.

**W. J. NEWTON, Solicitor.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**MARY ANN HOLMEAD ET AL. } No. 8,277. In Equity.**

**COLUMBUS J. ESLIN ET AL. }**

It is, this 29th day of May, A. D. 1883, ordered, that the report made by A. A. Lipcomb, trustee in this cause, of an offer to purchase lots twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), and forty-three (43), of John J. Johnson's recorded sub-division of part of "Mt. Pleasant" and "Pleasant Plains" belonging to the estate of the late James Eslin, deceased, a copy of which is filed with said report, for the sum of \$37,000, to be paid as provided in the original decree, passed in this cause the 6th day of December, A. D. 1882, be and the same is hereby affirmed unless cause to the contrary be shown on or before the 29th day of June, A. D. 1883. Provided, a copy of this decree be published in the Washington Law Reporter and the Washington Evening Star once a week for three weeks prior thereto.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, May 24, 1883.**

**GEORGE W. YEABOWER ET AL. }**

**No. 7,779. Eq. Doc. 21.**

**HELEN R. KENOLA ET AL. }**

William J. Miller and Samuel Maddox, trustees, having reported that they have sold the real estate in the proceeding in this cause mentioned, to wit: all of lot No. 257, and part of lot No. 256, in Healty and Hawkins' addition to Georgetown, to Phillip Young, at and for the sum of \$5,210; it is, this 24th day of May, A. D. 1883, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last-named day.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Orphans' Court Jurisdiction.**

**IN RE CHARLES E. GIBBS }**

**Guardian of }**

**ELIZABETH A. MCGREW. }**

Upon consideration it is, by the court this 31st day of May, A. D. 1883, ordered, that the sale herein reported to Andrew J. Simpson, be ratified and confirmed on 6th day of July next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before said last mentioned day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: 23-3 **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph Reese, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1883.

**EMMA L. REESE, Executrix.**  
**R. W. McPherson, Solicitor.** 23-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 1st day of June, 1883.

BENJAMIN S. HILTON, Complainant

No. 8505. Eq. Doc.

JOHN DEVLIN ET AL., Defendants.  
On motion of the plaintiff, by Mr. F. P. B. Sands, his solicitor, it is ordered that the defendants, John Devlin, William M. Dickinson, Nathaniel P. Chipman, Epaphras S. Sherman, A. Heydenrick and George Whitney, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 22-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of Baltimore, Md., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Amanda F. Beveridge, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of June, 1883.

DAVID PINKNEY WEST,

JOSEPH WHYTE,

Administrators.

22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1883.

MARY MCHUGH, Administratrix.

B. H. WEBB, Solicitor.

22-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. H. St. John, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1883.

MARY F. ST. JOHN,

Administratrix, 16 9th st., n. e.

22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jeannie O'Connor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1883.

22-3 CHARLES W. ELDRIDGE, Administrator c. t. a.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. May 28, 1883.

In the matter of the Will of Bridget McNamara, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Patrick H. McNamara.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
O. D. BARNETT, Solicitor. 22-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. June 1, 1883.

In the matter of the Will of Noble Young, late of the city of Washington, in the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Felix Nemegyei, Alexander Strauszard and Harry C. Egbert.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of June next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
J. J. DARLINGTON, Solicitor. 22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. June 1, 1883.

In the matter of the Will of Ezekiel Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Charles H. Oragin, Jr.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, will annexed, on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
C. H. ORAGIN, JR., Solicitor. 22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of May, 1883.

REBECCA YOUNG

No. 8,581. Eq. Doc. 23.

CORNELIUS W. YOUNG. }  
On motion of the plaintiff, by Mr. John J. Weed, her solicitor, it is ordered that the defendant, Cornelius W. Young, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 22-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

WILLIAM E. CLARK

No. 5,577. Equity.

ALBINA SEIBERT ET AL. }  
Job Barnard, trustee herein, having reported a sale of block 23; lots No. 1, 2, 3, 4, 5, 6, 7, 8 and 9, in block 29; and part of lot 11, in block 30, fronting 19.37 feet, in Gales street, and 25 feet on 16th street, all in sub-division of part of "Long Meadows," made by said trustee and others, to William E. Clark, for \$4,136; and a sale of block 27, in said sub-division, to Felix P. Seibert, for \$6,000:

It is, this 23d day of May, 1883, ordered, that said sales be confirmed on the 23d day of June, 1883, unless good cause to the contrary be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before that day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: R. J. MEIGS, Clerk.  
EDWARDS & BARNARD, Solicitors. 21-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court Business. May 18, 1883.

In the matter of the Will of Jacob L. Dorwart, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan D. Dorwart.

All persons interested are hereby notified to appear in this court on Friday, the 16th day of June, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
VOORHEES & SINGLETON, Solicitors. 21-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Margaret A. Barrett, late of Cincinnati, Ohio, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of May, 1883.

WM. T. S. CURTIS, Adm'r. c. t. a.

**CHANCERY SALE OF VALUABLE IMPROVED**  
real estate in the city of Washington, being premises No. 1313 New York Ave., n. w.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 23d day of May, 1883, and an amended decree passed on the 23d day of May, 1883, in equity cause 5631, we shall sell, at public auction, in front of the premises, on MONDAY, the 4th day of June, 1883, at 5 o'clock, p. m., all that certain piece or parcel of ground, lying and being in the city of Washington, District of Columbia, and distinguished on the ground-plan thereof as lot 1, in Davidson's recorded subdivision of square 261. The same being improved by a large three-story brick dwelling. Terms of sale, as prescribed by said decree: one fourth cash, residue in three equal instalments, at one, two and three years respectively from day of sale, with interest at the rate of five per cent. per annum, to be secured by deed of trust upon the property sold; or all cash, at option of purchaser. A deposit of \$500 required of purchaser at time of sale. All conveyancing at purchaser's cost.

The trustees reserve the right to re-advertise and sell the property at defaulting purchaser's cost and risk if terms are not complied with in ten days.

CHARLES H. CRAGIN, Jr. Trustee,  
Office: 321 Four-and-a-half-street, n. w.

WILLIAM A. GORDON, Trustee,  
Office: 330 Four-and-a-half-street, n. w.

21-2

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Mary E. Magruder, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

WILLIAM A. GORDON,  
Administrator c. t. a.

21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John M. Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

MARY VIRGINIA WELLS, 242 K street, n. w.  
GEO. F. APPELBY, Solicitor

21-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.

In the matter of the Estate of Washington Danforth. Application for Letters of Administration on the estate of Washington Danforth, of Vicksburg, Miss., formerly of the District of Columbia, has this day been made by Daniel O'C. Callaghan, at the request of James H. Danforth, brother of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of the District of Columbia, and some newspaper published in Vicksburg, Miss., previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 21-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, Sitting in Equity, May 23, 1883.

CATHERINE OURAND

No. 8428. Eq. Doc. 22.

GEORGE E. OURAND ET AL.

The trustee in this cause having reported the sale of lot 80, in Turtens' sub-division of part of square 180, for the sum of \$3,200, it is, this 23d day of May, 1883, ordered, that the said sale be ratified and confirmed unless objections thereto be filed herein on or before the 23d day of June 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior to the said last-mentioned date.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 21-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JOHN THOMPSON ET AL.

No. 1,028. Equity.

THOMAS ARNOLD ET AL.

Wm. F. Mattingly, trustee, having reported that he sold on May 1, 1883, at public auction, said part of sub-lot No. 22, in square 197, described in this cause, to John Curtis, at 75 cents per square foot, it is this 24th day of May, A. D. 1883, ordered, that said sale be finally ratified and confirmed on the 18th day of June, 1883, unless cause to the contrary be shown before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 21-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, May 18, 1883.

In the matter of the Will of John G. Killian, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Mary M. Killian, who also prays that Letters of Administration, c. t. a., may be granted to some suitable person.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration, c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. A. NEWMAN, Solicitor.

21-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary F. Woods, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of May, 1883.

ELIZABETH M. WOODS, 1017 O St., s. w.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Prince William County, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James C. Reid, late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY M. HIGGINS,  
Administratrix.

Witness: GEO. E. JOHNSON.  
O. STORRS, Solicitor.

22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 16th day of May, 1883.

AUGUSTUS S. WORTHINGTON ET AL.

No. 8428. Eq. Doc. 22.

GEORGE C. RANDALL ET AL.  
On motion of the plaintiffs, by Messrs. Worthington and Hagner, their solicitors, it is ordered that the defendant, George C. Randall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 20-3 R. J. MEIGS, Clerk.



# Washington Law Reporter

WASHINGTON . . . . . June 10, 1883.

GEORGE B. CORKHILL . . . . . EDITOR

IN THE case of the United States v. Campbell, in the United States Circuit Court, District of Oregon, the defendant was indicted for forcibly breaking into a building used in part as a post office, with intent "in said building to commit the crime of larceny," and a demurrer was interposed, on the ground that the indictment did not charge an act made criminal by any law of the United States.

The indictment was found under Section 5478 of the Rev. Stats. U. S., which provides that "any person who shall forcibly break into any post office, or any building used in whole or in part as a post office, with intent to commit therein larceny or other depredation," shall be punishable as therein provided.

Deady, J., delivered the opinion of the court (15 C. L. N., 303), sustaining the demurrer and holding that the power to punish house breaking generally with or without an intent to commit larceny therein was not conferred on Congress by the provisions of the Constitution authorizing the establishment of post offices and post roads; that as long as the statute was open to any other construction it would not be presumed that Congress intended thereby to provide for the punishment of house-breaking with intent to commit larceny that in no way affects the property of the post office, or that deposited therein, even if some part of the building broken into was used as a post office; that although the section taken literally may mean a breaking with intent to commit a larceny anywhere in any part of a building that is used in part for a post office, yet taken in connection with the subject-matter and the apparent reason of its enactment, it was not certain that such was the intention of Congress in passing it; it is ambiguous and must be construed, and in doing this the court would follow the rule laid down by Mr. Justice Story in *U. S. v. Coombs*,

12 Pet., 76, to the effect that where a section admits of two interpretations, one of which brings it within and the other presses it beyond the constitutional authority of Congress, it becomes the duty of the court to adopt the former construction; that by this rule, Sec. 5478 must be interpreted as not to include a case of breaking into a building used in part as a post office, with intent to commit a larceny anywhere therein, and it must be restrained in its application as if it read with intent to commit it in such part thereof as may be used as a post office; and that the indictment should so charge.

The court further held, that in an indictment for a crime defined by a statute, it is usually sufficient to follow the language of such definition; but when the language of the statute is ambiguous or defective, so that an indictment following the same does not with reasonable certainty notify the defendant of the offence for which he is to be tried, or omits some necessary ingredient of the crime in question, the indictment must by proper averments supply the omission or get rid of the ambiguity. Citing *Wh. Crim. P. and P.*, Sec. 220; *U. S. v. Carl*, 105 U. S., 612.

## Bequests to Religious Institutions.

### Editor Washington Law Reporter:

The filing of a bill recently to construe a will making bequests to certain religious institutions and to certain priests, has given rise to some discussion among lawyers as to the Maryland Declaration of Rights, as in force in this District, which declared such bequests, made without leave of the legislature, to be void. I observe that many have the impression that *all such wills are void* when the testator dies within thirty days after making the will.

The law is, plainly, to the effect that, *every gift or devise to a preacher or religious teacher, or for the use of a religious sect, order or denomination, &c., if made less than thirty days before the death of the testator, without the leave of the legislature, shall be void.*

Upon examination of the authorities some time ago I learned that this law is held not to apply to chartered institutions; and that where clergymen are beneficiaries by name, the bequests may be maintained. I think there is no conflict among the decisions on these questions.

C. H. ARMES.



## Supreme Court District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKBY.

THE UNITED STATES ex rel. EMINEL P. HALSTEAD, Administrator of the estate of JOHN N. and JOHN J. PULLIAM,

vs.

A. U. WYMAN, Treasurer of the United States.

{ Decided May 28, 1883.  
The CHIEF JUSTICE and Justices HAGNER and COX sitting.

AT LAW. No. 24,413.

1. Letters of administration granted by the Orphans' Court of this District upon the local assets of a deceased non-resident entitle the administrator to receive and receipt for moneys due his intestate in the Treasury of the United States, at Washington; and whenever the payment of the same is a mere ministerial function, not involving the exercise of official discretion, and the officers of the Treasury refuse to pay the administrator, a mandamus will lie from this court to compel such payment.
2. Such moneys constitute personal assets of the deceased within this District.
3. Since the repeal of the act of June 24, 1812, by omission from the Revised Statutes, foreign administrators can neither sue nor be sued as such in the District of Columbia.

Plaintiff's attorney, A. L. MERRIMAN.

Defendant's attorney, W. A. MAURY.

Mr. Justice HAGNER delivered the opinion of the court.

This is an application by the petitioner for a writ of mandamus to enforce the payment to him, in his representative capacity, by the Treasurer, of the three drafts described in the proceedings.

In response to the usual rule to show cause, the Treasurer has filed an answer, and the question has been fully argued by the counsel.

The facts requisite to an understanding of the case appear to be as follows:

By a law passed May 1, 1882, entitled, "An act for the allowance of certain claims reported by the accounting officers of the United States Treasury Department," it was enacted, "That the Secretary of the Treasury be, and he is hereby authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to the several persons in this act named, the several sums mentioned herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of the several claims examined and allowed by the proper accounting officers, under the provisions of the act of July 4, 1864, since December, 1880, namely, \* \* \* to John J.

Pulliam, of Fayette county, Kentucky, \$1,220; to John J. Pulliam, of Fayette county, \$545; to John J. Pulliam, ex'r of John N. Pulliam, deceased, of Fayette county, \$3,020."

Two drafts were issued by the Treasurer, payable by himself as Treasurer, to the order of John J. Pulliam, for the two sums first named, and a third draft payable to John J. Pulliam, as executor of John N. Pulliam, for the remaining sum.

These drafts were delivered to Halstead, the petitioner, the attorney and agent of John J. Pulliam, and are in his hands at this time.

John J. Pulliam, before endorsing the drafts, died in Tennessee, of which State he was a citizen. There has been no administration upon his personal estate in Tennessee; but an administrator was appointed in that State upon the personal estate of John N. Pulliam.

The petitioner, claiming to be a creditor of both of the Pulliams, applied to the Orphans' Court of the District of Columbia for letters of administration upon the estate of each of the Pulliams, and obtained letters of administration from that court.

Afterwards, a bill was filed in equity in the Supreme Court of the District, by Keyser, as receiver of the German American Bank, against Halstead, as administrator, and against the Tennessee administrator of John N. Pulliam, claiming for the bank an interest in so much of the proceeds of the drafts as belonged to an agent of the Pulliams, by virtue of an assignment to the bank, and asking that the bank's claim should be recognized and discharged in the administration of the personal estates of the two Pulliams. To that bill Halstead, the administrator, answered, and a *pro confesso* decree was obtained against the Tennessee administrator of John N. Pulliam; and after evidence taken, a decree was passed appointing Halstead a trustee, and requiring him to endorse the drafts in his quality of administrator and trustee, recognizing the claim of the bank, but directing the administrator to settle his accounts in the Orphans' Court, and reserving final action upon the claim until that settlement.

The petitioner states that he endorsed the drafts according to the direction of the decree, and presented them for payment to the Treasurer, who refused to pay them; and this petition is filed in the absence of any other remedy in the premises.

The death of the payees in the draft rendered it necessary that the payment should be made to some properly constituted representative of the deceased claimants. When such person should present them to the Treasurer it would appear that his duty to pay them was

a perfectly plain one, in no degree involving the exercise of anything in the nature of official discretion; but more evidently a plain, ministerial function than this court recently held in the case of *Key v. Frelinghuysen*, was devolved upon the Secretary of State to pay out money appropriated to discharge an award of the Board of Commissioners under a treaty with Mexico.

That the petitioner's appointment was regular is not a matter that can be questioned ordinarily in a proceeding like this. The Treasurer in this case, as in all others, has a right to ascertain whether the petitioner is the person he claims to be, but with the identification, ordinarily, the inquiry would end, and the payment be made.

But the Treasurer certifies in his answer, that he is advised by the First Comptroller that notwithstanding the action of the Orphans' Court of the District of Columbia in making the appointment, the petitioner has no right to receive these awards, because they do not constitute personal assets of the deceased within this District, which may rightfully be claimed by such an appointee, but that they are properly payable to the personal representative of the domicile where the claimants died, in the State of Tennessee.

Assuming that this defense may properly be made by the respondent, the only obstacle to the payment will be removed, if by the decision of a competent court he is advised that the objection is not well founded.

The high official and personal character of the distinguished officials who present this reason for withholding payment of the drafts renders it proper that the question should be carefully considered by this court, and we have given to the subject a painstaking examination.

That the position assumed by the Treasurer is at variance with the general principles governing the administration of the effects of a deceased person lying beyond his place of domicile, is too plain for question. According to the universally admitted theory on the subject, the administrator of the domicile is powerless to sue or compel payment of money due the deceased beyond the limits of the territory where he was appointed, or to collect assets of the deceased in any other jurisdiction; and nothing except a statutory provision, enacted in the place *rei sitæ*, can confer such an authority.

Judge Story, in his work on the *Conflict of Laws*, sec. 528, uses this language, after stating the principle in emphatic terms:

"So strict is the principle that a foreign administrator cannot do any act as adminis-

trator in another State, that where the local laws convert real securities in the hands of an administrator into personal assets, which he may sell or assign, he cannot dispose of such real securities until he has taken out letters of administration in the place *rei sitæ*. Thus mortgages are declared by the law of Massachusetts to be personal assets in the hands of administrators, and disposable by them accordingly. But the authority cannot be exercised by any except administrators who have been duly appointed within the State. So, if on the other hand an administrator sells real estate for the payment of debts, pursuant to the authority given him under the local laws, *rei sitæ*, he is not responsible for the proceeds as assets in any other State, but they are to be disposed of and accounted for solely in the place and in the manner pointed out in the local laws."

It is argued, however, that this general principle has no application in this District *with respect to the moneys in the Treasury*, and that this distinction is well settled by the decisions of the Supreme Court in the cases of *Kane v. Paul*, 14 Peters, 33, and *Vaughan v. Northrop*, 15 Peters, 1.

In my opinion the language used in those cases is inapplicable to the existing state of the law within this District, since the adoption by Congress of the Revised Statutes of the District in 1874.

The apparent generality of the language used by the court may be explained by the consideration that when those decisions were announced (1840-1), there was in force within the District of Columbia, as a constituent part of the testamentary law, the act of Congress of 24th June, 1812, which provided that it would be lawful for any person to whom letters of administration or testamentary should be granted in any of the United States or territories thereof, to maintain any suit or action or to prosecute or recover any claim in the District of Columbia in the same manner as if the letters of administration or testamentary had been granted within the District. This law came into force only eleven years after the establishment of the District, and in 1840 seemed to be as firmly fixed as any other part of the testamentary law, and as little likely to be repealed by Congress or omitted in any revision of the statutes as any other provision of the system; and, as it appears to me, it was only because of the existence of this provision, merged as a constituent in the testamentary code at the time, that the court used the language referred to.

In the case in 14 Peters, the court only decided that letters of administration *de bonis*

*non cum testamento annexo* granted in the District of Columbia, on the personal estate of a non-resident, upon the allegation that the executors who had qualified in Maryland were dead, when one of them was really living, were, for that reason, void, and that upon the appearance of that executor, the administrator *d. b. n.* was bound to surrender to him the moneys he had collected from the Treasury upon a claim of the deceased allowed by commissioners under a treaty with France.

The court did not undertake to decide that the grant of letters *d. b. n.* here would not have been valid if the executors had both been dead as was represented to the Orphans' Court when it made the appointment, but as it expressly says, the answer to the question whether the letters testamentary in Maryland should prevail over letters granted in the District of Columbia depends upon the legal character of the latter letters—"are they void or voidable"—and the court declares, as we have stated, that under the circumstances of the case they were "void *ab initio*."

But the court went further, and in answering the inquiry as to what rights letters testamentary or of administration granted in either of the States of the Union can give to an executor or administrator in the District of Columbia, except the right to sue given by the act of 1812, says, that "the right to sue, in the manner it is given, gives the right to such executor or administrator to receive from the Government, either in the District or in the State where letters have been granted, any sum of money which the Government may owe to a testator or intestate at the time of his death, or which may become due thereafter, or which may accrue from the Government to a testator in any way or at any time."

In the case in 15 Peters the question presented was whether the next of kin and heirs of an intestate, dying in Kentucky, could sustain a bill in equity in this District against a non-resident administrator of the deceased appointed in Kentucky, to recover their shares of a sum collected from the Treasury by the administrator for military services of the deceased. The court held that the act of 1812 did not authorise such a suit against the Kentucky administrator within the District of Columbia although he was summoned here; but only empowered the foreign administrator to sue and prosecute and recover claims due the deceased, and that moneys so collected from the Treasury constituted assets under the Kentucky administration and that distribution should be sought there. It was in reply to the argument that the foreign administrator might be made liable here because the money

was collected here and no constituted local assets within the District, that Justice Story, speaking for the court, said:

"The debts due from the Government of the United States have no locality at the seat of Government. The United States in their sovereign capacity have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor which constitute local assets in his own domicile. On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether it be at the seat of Government or at any other place where the public funds are deposited. If any other doctrine were to be recognised, the consequence would be that before the personal representative of any deceased debtor [creditor?] belonging to any State in the Union would be entitled to receive payment of any debt due by the Government, he would be compellable to take out letters of administration in this District for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public, as well as private, inconvenience."

So far as this opinion sustains the validity of a release by a foreign administrator of a debt due to his intestate, it is but a statement of undoubted law, which has been carried so far that it has been held that a *bona fide*, voluntary payment to an administrator of a debt due to the estate is a legal discharge of the debtor, although the grant of administration afterwards proves to have been voidable or even void. *Allen v. Dundas*, 3 T. R., 125, cited in 14 Peters, 41; see also *Mackey v. Coxe*, 18 How., 104. And this is but an example of a class of cases where the court, in the interest of peace, and to prevent loss to one who has acted *bona fide* under a mistake induced by an appearance of right or title, sometimes refuses to subject the innocent debtor to the punishment of a second payment without designing in the least degree to endorse the propriety of such a course for the future.

But that the opinion, so far as it declares it to be unnecessary for the foreign administrator to take out letters here (for it does not say he may not do so), is founded upon the feature of the testamentary law, which was engrafted upon it by the act of June 24, 1812, in my

judgment is sufficiently shown in a subsequent portion, where the learned judge, in construing that act, says: "It does not authorize any suits or actions in the District against any such executor or administrator. Its obvious design was, therefore, to enable foreign executors and administrators to maintain suits, and to prosecute and recover claims in the District, *not against the Government alone*, but against any person whatever, resident within the District, who were indebted to the deceased, and to discharge the debtor therefrom without the grant of any local letters of administration. In effect, it made all debts due from persons within the District, not local assets, for which a personal representative would be liable to account in the courts of the District, but general assets, which he had full authority to receive, and for which he was bound to account in the court of the State from which he derived his original letters of administration."

It was the act of 1812, therefore, which, according to this statement of the court, had worked so marked a change in the general principles of the law of administration as to convert local assets into general assets; and such words, clearly, would not have been used if that act had not been in existence.

This construction is strengthened by the language of the court in the subsequent case of *Mackey v. Cox*, 18 How., 104. This was an action at law brought in this District against the sureties on the bond of one Raines, who was appointed by the Orphans' Court of the District of Columbia administrator upon the personal estate of Samuel Mackey, a Cherokee Indian. There had been an administration at the domicile of the deceased, and the administrators had constituted Raines their agent to draw the money. But it appears from the opinion of the court that the Treasury Department refused to pay Raines on this order, and required him to take out letters of administration here, which were accordingly granted him by the Orphans' Court of the District. The Treasury officers then paid him the money; and as agent of the Cherokee administrators, Raines receipted to himself as administrator in the District for the money received. He lost his life and the money on his way home, and this suit was brought by the surviving administrator and distributees of the deceased. The court decided that the letters of administration in the Cherokee country were entitled to the same respect as those of any of the States; and proceeding to consider the effect of the act of 1812 which it quotes at length, says: "Under this law the money due to Mackey, might have been paid,

and indeed should have been paid to Raines, the attorney-in-fact of the administrators of Mackey. But, through abundant caution, letters of administration were required to be taken out in this District as a prerequisite to the payment of the money by the Treasury Department."

It thus appears that the court ascribes the right of the Cherokee administrators to demand the money from the Treasury to the act of 1812, and to that alone. It nowhere says that the Orphans' Court of the District was without authority to grant the letters, or that the claim against the Government was not assets in the District. His receipt to the Treasury as local administrator was recognized as a full discharge of the claim, and the Court throughout speaks of the administration as if it were perfectly valid. Thus, on page 104 it is said: "This suit is brought in the name of the surviving administrators of Mackey and of the distributees. Regularly, an action of the distributees cannot be maintained, unless an application has been made to the Orphan's Court in this District to order a distribution and to authorize or direct the administrator, Raines, to pay the same. This administration being ancillary to that of the domicile of the deceased, the distribution would be governed by the law of the domicile."

Justices Nelson and Curtis, in their separate opinion, stated that they concurred in the decision of the Court, "upon the ground that, as no final account had been settled by the administrators in the Orphan's Court, and no order had been made by the court, either directing the administrator to pay the balance in his hands to the principal administrators, for distribution of them, or directing a distribution to be made by them, there was no breach of the bond. This being an ancillary administration, it depended upon the discretion of the Orphan's Court which granted it whether the money remaining in the hands of the ancillary administrator, after the satisfaction of all claims in this jurisdiction, should be distributed here by the ancillary administrator or remitted to the principal administrators for distribution; and until that discretion shall be exercised, and the ancillary administrator directed which of these courses to pursue, he is in no default, and his surety is not liable."

Certainly there is no intimation here that the grant of letters in the District was void or voidable or in any respect irregular; or that the claim against the Treasury collected and receipted for by the administrator under his letters here, was not assets properly receivable by him like any other assets due the estate of the intestate within this jurisdiction.

And these cases occurred while the act of 1812 was in full force.

In Story's Conflict of Laws, already quoted, the examination of the claims of administrations under different jurisdictions is continued as follows: "The subject came again under consideration before the same court in *Mackey v. Coxe* (just quoted) where it was decided that an administrator appointed in the Cherokee country might receive payment of a debt in the District of Columbia, and his discharge or that of his authorized attorney will be valid. *But this is upon the ground that by the act of Congress he might sue in that District.* He did, however, out of abundant caution, take out letters of administration in that District." And the author proceeds to state that the true law in regard to ancillary administration is stated in that case by Justices Nelson and Curtis in the opinion quoted above.

It seems quite evident that the learned author attributed to the force of the act of 1812 alone the novel powers ascribed to foreign administrators within the District of Columbia in the decisions above referred to—powers that could not have been claimed at the time within any other jurisdiction in the Union, and which at this time can rightfully be claimed nowhere, unless in virtue of a similar statute.

But, as is well known, since the adoption of the revision of the District laws in June, 1874, the act of 24th June, 1812, is no longer in existence, and we are consequently remitted to the condition of the law in this respect as it existed before the passage of that statute, and which it was the purpose of the legislators to change by its enactment. And I submit, it is impossible to contend that in the absence of that law any foreign administrator or any other person can compel the collection of a private debt due here to his intestate, or pass title to personal property of the intestate found here, without first taking out letters of administration from the Orphans' Court of the District.

Is there any ground for supposing that such an administration is unnecessary and improper where the property belonging to the deceased consists of money due from the Government under an appropriation by law?

The money claimed in this case was appropriated by Congress to the Pulliams. They were ascertained sums nominated in the statute and unchangeable to the extent of a cent by any officer of the Government; nor is it in the power of the Government, in any way, to resume ownership of the fund. It belonged to the designated claimants as fully as any

property they might justly call their own. It is so completely segregated from the unappropriated money in the Treasury, that by section 306, Revised Statutes, where such drafts as those before us, shall remain outstanding and unpaid for three years, their amount must be deposited by the Treasurer and covered into the Treasury by warrants and be carried to the credit of the parties to whose favor they were issued, or to the persons entitled to receive pay therefor; and carried into "an appropriation account denominated outstanding liabilities." It is not easy to devise a plan more effectually earmarking the money called for by the draft with the name of its true owner.

And it is an important consideration, in view of the language of the court in *15 Peters*, that the provision just cited was adopted in 1866, twenty-five years after that decision. In the same connection, in my opinion, it is important to notice the provision of the act of 1846, 6th August, entitled "an act to provide for the better organization of the Treasury," which recited that it had been found necessary to make further provision to enable the Treasurer the better to carry into effect the act of September 2, 1789.

By section 1 of that statute—Rev. Stats., § 3591—it was declared that "the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer, his assistants and clerks, with the fire-proof vaults and safes, erected for the safe keeping of the public money, and such other apartments as are provided as places of deposit for the public money, shall be the Treasury of the United States." The article provides for other places where public moneys shall be deposited, under the designation of mints, assay offices and offices of assistant treasurers. The superintendent of one of the mints and of an assay office are constituted assistant treasurers, and the statute declares that the rooms assigned by law to be occupied by the assistant treasurers, together with the fire proof vaults therein or connected therewith, shall be appropriated to the use of the assistant treasurer and for the safe keeping of the public moneys deposited with them respectively.

But when these depositaries are referred to in the laws, they are mentioned by distinctive names, in contradistinction to the establishment at Washington, which with its rooms and apartments was to be recognized as referred to whenever the word Treasury was used. This discrimination is preserved in several of the subsequent sections of the article.

Thus, by § 3615, all collectors and receivers of public moneys within the District of Co-

lumbia are required, when directed, to pay over all such moneys "to the Treasurer of the United States at the Treasury;" whereas, by the same section, the collectors and receivers of public moneys at New York, Philadelphia, &c., are required to pay such moneys to the assistant treasurers at their cities, at their offices respectively, not describing them as the Treasury.

So, by section 3641, the Postmaster General is authorized to transfer moneys belonging to the postal service between the Treasurer, assistant treasurers and designated depositaries at his discretion, &c., sustaining the idea that a transfer to an assistant treasurer is not a transfer to the Treasurer, and describing the place of transfer to the official home of that officer.

In *Cooke v. United States*, 91 U. S., 402, the Supreme Court declared, that United States notes which are not made payable at any particular place are, consequently, in law payable at the Treasury, and this is at the seat of Government, and in the Treasury Department; and that the receipt and payment by the assistant treasurer in New York of such notes, authorized to be retired before maturity, was not a payment or redemption by or at the Treasury Department, and did not retire the notes without a further order of the Secretary.

Other provisions are to be found in the statutes where the expression "Treasury of the United States" is evidently used to denote only the office of the Treasurer located at Washington, as is the case with respect to the redemption of the notes of national banks which have refused payment. The law says they shall be paid at the Treasury. Would any holder of such a banknote think of applying to an assistant treasurer or other depositary for its redemption? He might ask for its redemption of every assistant treasurer and mint and assay office from Maine to Alaska, and he would receive a negative answer from every one, nor could he obtain the money until he should apply to the place designated in the law—the Treasury at Washington city. But it is unnecessary to pursue the subject further.

Of course, in a general sense, all public moneys may be said to be in the Treasury wherever they may be, but Congress did not mean to enact this truism. It meant, as it seems to me, to draw a distinction between the Treasury proper and its branches and agencies: to localize the chief treasure house of the Nation at the seat of Government; at the place where the Treasurer is required to perform his public duties in the city of Washington, where this money now is.

Why should not the money represented by these debts, and set aside for their payment, be considered local assets here? It has all the characteristics of other assets. It is vendible and assignable. By the testamentary law of Maryland of 1798, ch. 101, sub-ch. § 14, 3, in force here, "a common warrant for land not executed or located in the lifetime of the deceased, shall be assets after his death, in the hands of an executor or administrator, and subject to distribution, as well as every debt due to, or just claim of the deceased."

That the money appropriated and set apart for the payment of these debts would constitute debts due to the deceased, and just claims on their part, it seems impossible to deny. If it is not assets somewhere, how can it be received by the foreign administrator in his jurisdiction? And the Government is as much placing its own indebtedness upon the plane of the indebtedness of one of its own citizens, by admitting the claim of a foreign administrator to receive the money as assets, as it would be if it paid it at once to the administrator within the District. The common warrant spoken of in the section quoted above, was an incipient patent of State lands to be exchanged after location for a patent. That which it represented was still within the State offices not yet formulated or separated from the other possessions of the State; and yet Maryland admitted that such a common warrant should be considered as assets of the deceased.

If the ubiquity properly claimed for the Government of the United States is to be ascribed to the debts due by the Government, there would seem to be no good reason why those debts should not be payable as well in Washington as elsewhere. Ubiquity implies universal presence, not uniform absence. And if the debts are to be considered as everywhere, it is inconceivable to me that the money especially appropriated and dedicated to pay them, evidenced by the Treasurer's draft payable here, should be held to be absent from the only place in the country where in fact and truth it actually is—in the Treasury of the United States in Washington city.

It was only the debts of the Government which the court declared had no locality at the seat of Government. But they are capable of being localized. A draft of the Treasurer payable at Boise city is not payable elsewhere, although the Treasurer might have directed its payment at some other locality, in which case it would have been payable only at that place. These drafts are payable at Washington, at the Treasury of the nation, and here only

they are properly payable as they now stand.

Every consideration of propriety suggests the advantage of making payment to a person appointed here, whose qualification, bond and character can readily be inquired into, rather than to one who may have administered at a great distance, and without real assurance of safety to the fund.

And as it cannot be denied that, under the law as it now stands, there must be local administration here to pass title to all other personalty that may be found here belonging to a non-resident, convenience and equal justice would dictate that this same tribunal should be allowed to administer other personal effects in the form of moneys to be derived from the Government. Why should local creditors be driven to two rival representatives, especially as the law of the District may possibly reject their claims, and they may thus be deprived of their just due because of the refusal of the Government authorities to pay the money to the administrator, of the jurisdiction where the debts were contracted, perhaps upon the faith that the claim against the Government was to be the source from which the creditors were to be paid?

The other courts of the system within the District have repeatedly taken cognizance of suits respecting funds in the Treasury claimed by rival parties, and have recognized that the moneys in these cases before them were within the District and the jurisdiction of its tribunals. It is true that in the early case of *Comegys v. Vasse*, in 1825, the circuit court used this language: "The fund out of which the claims are to be paid are in the Treasury of the United States. Where is that? The Treasurer resides at Washington and the head of the Department; but is the money there?" The bill was filed by a bankrupt, claiming an account from his assignees and that they should discover what amount they intended to claim before a commission under a Spanish treaty on complainant's accounts, and that they should be enjoined from receiving whatever amount may be decided by the commission under the treaty to be due on that claim, and that a like injunction should go against the Treasurer. It may be that the negative answer of the court to its own inquiry was predicated of the fact that the money had not yet been awarded to the claim upon the theory enunciated by the Supreme Court of the United States in the case of *Clark v. Clark*, 17 How., 522, that "the fund had no existence till the award was made."

But whatever may have been the reason for their refusal, it is certainly at variance with subsequent declarations of the same court,

and of the Supreme Court of the United States. In the numerous cases arising under the mixed commissions for the adjustment of the claims between this country and Great Britain and Mexico, it seems to have been assumed that the money, after it had been placed in the Treasury for distribution to the American claimants by the Secretary of State or Secretary of the Treasury, was properly to be considered as at the seat of Government. Mr. Justice Wylie, in his opinion in *McManus et al. v. Standish et al.*, 1 Mackey, 152, examines a number of these cases at length and decides that this court had jurisdiction in that case. All the parties were non-residents, but all the essential ones, it was held, had appeared in the court. In the conclusion of this branch of his opinion, he says: "We do not wish to intimate an opinion, or an impression even, that if the fund is in the Treasury, and if the party is not here, that that would make any difference. That is not the question to be decided in the cases now under consideration. We are not required to go beyond the fact that the fund is in the Treasury here, and the parties claiming the fund are before the court; and this we hold gives us jurisdiction here."

The money referred to in that case was paid by the Mexican Government, and was in the Treasury subject to the order of the Secretary of State, and the justice declares it is in the Treasury here.

In this large class of cases which have been before the courts of the District, and many of them before the Supreme Court upon appeal, the action of the courts seems to be consistent only with the idea that moneys thus circumstanced were to be considered as in the Treasury in Washington city.

Thus in the case of *Whitney et al. v. Dey et al.*, which was a contest between claimants to an award under a Mexican commission, the bill, which was filed in 1851, prayed for an injunction against the defendants, who were all non-residents, and also against the Secretary of the Treasury, although he was not made a party to the suit.

The circuit court ordered the injunction to issue before answer or appearance, and it was issued as prayed, served upon the Secretary, and by him respected, as were also the subsequent orders passed by this court after its organization, requiring the payment by the Secretary of portions of the award.

The same course was pursued in the subsequent case of *Clark v. Clark*, 17 How., 515 (which was cited with approval in *Phelps v. McDonald*, 99 U. S., 806). There, too, the defendants were non-residents, and an injunction



tion was issued against the Secretary of the Treasury, though he was not made a party.

In the case of *Pemberton v. Lockwood*, 21 How., 257, the Secretary of State was made a defendant with others who were non-residents, to a bill seeking payment of part of an award made to the owners of slaves liberated from the ship *Creole*. Mr. Marcy, the Secretary, himself a distinguished jurist, answered the bill, not questioning the jurisdiction of the courts, the money having been placed in the Treasury to pay these awards upon the orders of the Secretary of State.

I will refer now to some cases not arising under the operation of a statute authorizing litigation in this jurisdiction, as was the case with respect to those we have been considering.

In the case of *Ridgeway v. Hayes*, 5 Cranch C. C. R., 34, where an award by commissioners under a French treaty was the subject of controversy, one of the claimants applied to the circuit court for an injunction against the Treasury officers to prevent the payment of the money out of the Treasury to the defendant. The language of the court in the case of *Comegys v. Vasse*, before quoted, was cited to show a want of jurisdiction to grant the relief. But the chief-justice replied: "In the present case the fund is placed in the Treasury of the United States as in a place of deposit only, and the United States are merely trustees;" and he proceeds to say that he cannot see why the United States, in cases in which they are merely stakeholders, should not submit to these decisions and aid those tribunals in the due administration of justice."

A similar decision was made in the case of *Duthill, adm'r, v. Courvauld*, reported in the same volume, in which Congress, to carry out a French treaty, made a provision for a suit to be brought in the District of Columbia. This was the case that went to the Supreme Court, and is reported in 14 Peters, 33.

In the case of *Milner v. Metz*, 16 Peters, 221, Metz, as trustee, filed his bill against several non-residents, and the Secretary of the Treasury, as a co-defendant, to enjoin the receipt by the defendant of a sum appropriated by a private act of Congress to his assignor for extra services. The court granted a perpetual injunction as prayed, which was sustained by the Supreme Court on appeal. The jurisdiction of the court could only have been based upon the idea that the money was within the jurisdiction of the court at the seat of Government, for there was no special statute conferring jurisdiction, and the defendants, except the Secretary, were residents of Pennsylvania.

The circumstances of the case of *Kinney v. Meguire*, recently decided by the Equity Court, were very much like those of the present case. Several drafts had been issued by the Treasurer, under a private act of Congress, payable to the order of sundry sailors who had been impressed by Admiral Porter for service in the Red river during the war, and were captured and retained as prisoners until the close of hostilities. These drafts were delivered to Meguire, who had been, and claimed to be still, their attorney. He was a resident of Ohio, and left the jurisdiction with the drafts in his possession. Kinney, who exhibited properly authenticated powers of attorney since the issue of the warrants, applied to the Treasurer for the issue of other drafts, and the bill was filed to procure an injunction to forbid Meguire from asserting title under the drafts in his possession. Meguire never answered, but there had been publication against him under Sec. 787 Rev. Stat. D. C., which allows that as a substitute for personal service "in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim or demand to or against any real or personal property *within the jurisdiction of the court*," and this court decreed according to the prayer of the bill, after full argument upon the ground that the money belonging to the claimants, to pay which these drafts had been issued, was in the Treasury at Washington, and therefore within the jurisdiction of the court. It was understood that other drafts would be issued by the Treasurer if the court should decide against the legal right of Meguire to retain those already issued.

It seems plain, then, that when the Orphans' Court considered the funds claimed in this proceeding as localized so as to be proper subjects of jurisdiction here, it was but acting in accord with the established practice of the other branches of the court. During the existence of the act of June 24, 1812, it was unnecessary and useless to take cognizance of such funds as local assets here, but this was because, and only because, of the existence of that statute.

The learned justice in the opinion in *Vaughan v. Northrop*, in combatting the idea that the personal representative of a non-resident creditor of the Government should take out letters within the District of Columbia before he could receive the claim, declares, "such a doctrine has never yet been sanctioned by any practice of the Government."

[(Concluded next week.)]



## Land Department.

Furnished by SICKELS & RANDALL.  
Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

### Mining Applications.

The register and receiver are justified in rejecting an application which includes more than one lode mining claim.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C. June 8, 1883.

REGISTER AND RECEIVER,  
Central City, Colorado.

GENTLEMEN: I am in receipt of your letter of 28th of April last, transmitting papers on appeal from your action in declining to receive in its present form an application for patent by the Aurora Gold Mining and Milling Co., through its agent Chas. W. Price, for the reasons that it embraces six different and distinct lodes, to wit, the "Effie," sur. 831; the "Gem," sur. 832; the "Ezra White," sur. 833; the "North Eclipse," sur. 834; the "Blagden," sur. 835; and the "Charter Oak," sur. 836; and because the applicant had tendered and made payment of but one fee, to wit, \$5 for each of you.

You refer as authority for rejecting said application, and for requiring a separate application for each lode, to previous rulings of this office, dated August 17, and November 12, 1875 (Copp's L. O., Vol 2, pp. 82 and 130).

It has been the almost uniform practice of this office to require a separate application for each lode claim. In some instances, as in the DeWitt case, (Id., 9-34) applications, embracing several contiguous claims upon the same lode have been recognized. But I do not understand that the ruling in that case was intended as a precedent to be followed in all cases, even where the claims are upon the same lode, which is not the fact in this case. The statute seems to have left the matter open to regulation, and the department has adopted that practice which seems best adapted to facilitate the issuance of patents, to save labor, and to prevent complications. A change of practice would likely result in delay to applicants and unnecessary trouble to this office. Embarrassments and complications growing out of questions of title, filing of adverse claims, etc., might arise as to one or more of the several claims included in one application which would delay action upon all of them.

The ruling and regulations of this office up-

on the subject matter have not been changed since the DeWitt decision, and I see no good reason for departure from the views maintained in the letters of August 17 and November 12, 1875, above referred to.

Your action is accordingly approved.

You will allow applicants the usual time for appeal.

Very respectfully,  
L. HARRISON.  
Acting Commissioner.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

- JUNE 8, 1883.  
24520. Annie E. Connell v. Charles W. M. Hubbell et al. Damages, \$3,000. Piffs attys, Smith and Oriskany.  
24521. Catharine McDonough v. David F. West et al. Account, \$393.68. Piffs atty, John S. Latimer.  
JUNE 9, 1883.  
24522. Hood, Bonbright & Co. v. John Leonard. Account, \$136.36. Piffs attys, Ross & Dean.  
JUNE 11, 1883.  
24523. The United States, ex rel. James H. Elgin, v. W. W. Upton, Ass. Sec. of Treasury, U. S. Mandamus. Piffs atty, A. L. Merriman.  
24524. The United States v. Albert E. Boone et al. Bond, \$800. Piffs atty, Geo. B. Corkhill.  
24525. Same v. Same. Bond, \$500. Piffs atty, same.  
24526. Charles H. Parker v. William Gibbons. Judgment of Justice O'Neal, \$50.  
24527. Henry D. Boteler v. D. W. Bliss et al. Note, \$154.17. Piffs atty, J. J. Waters.  
24528. Michael Joachim v. John O. Joachim. Account, \$608. Piffs attys, Crittenden & Mackey.  
24529. The Fifth Baptist Church of Washington, D. C. v. The B. & F. E. Co. Damages, \$20,000. Piffs atty, J. J. Darlington.  
JUNE 12, 1883.  
24530. Miller & Yager v. Dennis Harrington. Note, \$2,040.06. Piffs attys, Hanna & Johnston.  
24531. John T. Arms v. Jacob Ramsburg & Son. Note, \$209.54. Piffs atty, James G. Payne.  
24532. Horace E. Thurber et al. v. John R. Connell. Account, \$379.18. Piffs atty, E. Coyle.  
24533. Robert N. Lamb et al. v. Nathan W. Fitzgerald. Foreign Judgment, \$412.60. Piffs atty, A. C. Bradley.  
24534. Jane A. Shoemaker v. Frederick Wetzel. Judgment of Justice Bundy, \$100.  
24535. S. M. Beard & Co. v. Wm. B. Mix. Account, \$654.66. Piffs attys, Albert & Warner.  
JUNE 13, 1883.  
24536. John M. Spingmann v. The B. & P. E. Co. Piffs atty, James G. Payne.  
24537. George Rynear, jr. v. Hubert Schutter. Notes, \$940.66. Piffs attys, Carnal & Miller.  
24538. Frances M. Joyce et al. v. Washington Nailor. Account, \$234.81. Piffs attys, Carnal & Miller.  
24539. Morris Popper v. O. Dammann. Notes, \$368.56. Piffs atty, N. H. Miller.  
24540. Harrison Wagner v. Adams Express Co. Account, \$100.940. Piffs attys, Hay & Griswold.  
24541. Sarah D. Dukes v. Selmon K. Hannegan. Acc't, \$130. Piffs attys, Birney & Birney.  
24542. John T. Campbell v. John Cooksey. Account, \$161.88. Piffs atty, D. O. O'Callaghan.  
24543. J. B. Brewster & Co. v. D. W. Bliss. Note, \$1,000. Piffs attys, Albert & Warner.  
24544. Jeselohn & Co. v. Bernard Silverberg. Note, \$1,144.31. Piffs attys, Albert & Warner.  
24545. John Van Blawick et al. v. William E. Spalding. Account, \$300. Piffs atty, H. E. Davis.  
24546. William B. Moses et al. v. George Taylor. Notes, \$7,119.46. Piffs attys, Cook & Cole.  
24547. Same v. Same. Notes, \$17,217.60. Piffs attys, same.  
JUNE 14, 1883.  
24548. Edward T. Simpson v. Carberry S. Hilton. Judgment of Justice Taylor, \$40.66.

### IN EQUITY.—New Suits.

- JUNE 8, 1883.  
24549. Mary J. Stinde et al. v. Jos. R. West. Com. sol., Wm. F. Mattingly.  
24550. Edgar Murphy v. George S. Washington et al. To sell. Com. sol., Chas. H. Craig, jr.

3597. John B. Alley v. Washington D. Quinter. Specific performance. Com. sol., Hillyer & Ralson. Defts sol., G. E. Hamilton.

3598. Estate of Geo. H. V. Fox, upon petition of Catherine T. Fox. To approve probate court proceedings. Com. sol., D. O'C. Callaghan.

3599. Arabella S. Bickford v. Nathan B. E. Bickford. For divorce. Com. sol., John E. Norris. Defts sol., H. B. Moulton.

JUNE 9, 1883.

3600. James H. Marr, Administrator v. Edward Kubel. For recovery of U. S. Bonds. Com. sol., W. P. Bell.

3601. Susan B. Fugitt v. Benj. Freeman et al. To sell. Com. sol., F. T. Browning.

3602. Susan Brown et al. v. Charles F. Brown et al. To sell. Com. sol., Hagner & Maddox.

JUNE 12, 1883.

3603. Margaret Kennedy v. Ann Grace et al. For authority to sell. Com. sol., James H. Saville.

3604. Frank T. Browning v. Albert Grant. Judgment creditors' bill. Com. sol., Browning and Garnett.

3605. Richard Wood et al. v. Samuel O. Pomeroy et al. Judgment creditors' bill. Com. sol., A. O. Bradley.

3606. Robert S. Rodgers et al. v. Ann E. Rodgers et al. To substitute trustee. Com. sol., J. W. Warner.

JUNE 13, 1883.

3607. James Quiller v. Charlotte A. Quiller. For divorce. Com. sol., O. Storr.

JUNE 14, 1883.

3608. Henry J. Bright v. Elizabeth Nottingham et al. To appoint new trustee. Com. sol., V. B. Edwards.

#### PROBATE COURT.—Justice James.

MAY 28, 1883.

Isaac N. Carey, guardian; bonded.

Estate of Margaret A. Barrett; administrator c. t. a., bonded.

Estate of Sarah Berry; executors bonded and letters of administration issued.

Estate of Joseph Rees; administratrix bonded.

Estate of Harriet A. Birnie; letters granted and party bonded.

Estate of Geo. W. Collins; executrix bonded and qualified.

Estate of Susan Falconer; administrators qualified and bonded.

Will of Francis A. Ashford; filed and fully proved.

Will of Bridget McNamara; petition for probate and letters; order of publication issued.

Estate of Ezekiel Hughes; will proved by third witness; petition for probate and letters.

Estate of Thomas L. Dilley; petition for administration.

Estate of Felix Barlett; receipts of pro rata distribution filed, &c.

MAY 31, 1883.

In re estate of John S. Hopkins; petition of daughter and renunciation of widow filed.

Anna A. O. Felter, guardian; reappraisal of annual rental value returned.

In re Thomas Enright, guardian; appointed and bonded.

Will of Elizabeth Miller; filed for probate.

Charles E. Gibbs, guardian; report of sale of orphans' real estate, decree nisi.

Estate of Jeannie O'Connor; inventory returned by administrator c. t. a.

JUNE 1, 1883.

Will of Wm. H. Herbert; filed.

Estate of Fisher A. Foster; proof of publication; will admitted to probate, executor bonded and qualified.

Will of Francis A. Ashford; will admitted to probate and letters granted.

Estate of Geo. Washington; administrator appointed and bonded.

Estate of John S. Hopkins; decree appointing administrator.

Will of Oscar H. Lackey; filed and admitted to probate and letters granted.

Will and codicil of Andrew Bethwell; petition of executors; will fully proved and letters granted to executors.

Estate of Noble Young; publication ordered and commission to take depositions of witnesses to will.

Estate of John O. Evans; order reducing appraisement, &c.

Estate of Washington Danforth; appointment of administrator; nisi on petition and order of publication.

Estate of John Kennedy; inventory of personalty returned by administratrix.

Estate of Lewis B. Wynne; inventory of personalty returned by executor.

Estate of James O. Reed; proof of publication filed and administratrix appointed and bonded.

Estate of Anthony M. Dutch; will admitted to probate and letters granted.

Estate of Ezekiel Hughes; publication ordered.

Will of Elizabeth Moller; fully proved.

Estate of Catharine Brown; will admitted to probate and letters granted to executors.

Estate of James W. Norton; inventory of personalty returned by administrator.

Estate of Ohas A. Friedrichs; proof of publication filed and will admitted to probate.

Will of Samuel Magee; fully proved.

Geo. A. Bassett, guardian; appointed and bonded.

Estate of Thomas L. Dilley; order appointing administrator.

Estate of Susan Falconer, order of sale at public or private sale.

Estate of John J. F. Joachim; answer of executors filed.

Will and codicil of Josiah Essex; filed.

Estate of Amanda F. Beveridge; petition for letters; letters granted, administrators bonded.

Accounts passed:

Estate of David McQueen; final account of executor.

Estate of James Hartigan; final account of administrator.

Estate of Henley, alias Campbell, Ann; first account of administratrix.

Estate of Caroline S. Risque; final account of administrator w. a.

Grace F. Edes, guardian; first account.

Wm. B. Gurley, guardian; first account.

Peter P. Little, guardian; final account.

Chas. A. Offutt and Geo. F. Wetschick, guardians; joint account.

James M. Terrell, guardian; second account.

Estate of Edward E. Anderson; executor partially bonded.

#### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. June 13, 1883.

EDWARD TEMPLE ET AL.

No. 7767. Eq. Dec. 21.

CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit; lot numbered five [5], in square numbered six hundred and forty [640], to Charles H. Parker, for \$197.10; lot numbered eight [8], in square numbered six hundred and forty two [642], for \$180, to Charles H. Parker; all of square numbered six hundred and forty-five [645], to J. Harrison Johnson, O. T. Thompson and Edward D. Wright, for \$4,731.46; lot numbered two [2], in square numbered one thousand and eleven [1,011], to Horetta F. Talcott, for \$466.50; lot numbered eight [8], in square numbered one thousand and seventy [1,070], to Aug. Burgdorf, for \$132.48; lots numbered nine [9], ten [10], eleven [11], twelve [12], thirteen [13] and fourteen [14], in square numbered one hundred and twenty-eight [128], to Aug. Burgdorf, for \$2,000; south one-half [34], of lot numbered ten [10], in square numbered twenty-eight [28], to Aug. Burgdorf, for \$250; lots numbered two and three [2 and 3], in square numbered twenty [20], for \$118; lot numbered nineteen [19], in square numbered six hundred and eight [608], for \$60, to Aug. Burgdorf; lots numbered two [2] and fourteen [14], in square numbered one thousand and ninety-five [1,095], and lots numbered five [5] and six [6], in square numbered one thousand and ninety-six [1,096], and the south forty [40] feet front of lot numbered one [1], and all of lot numbered seventeen [17], in square numbered one thousand and ninety-seven [1,097], to Aug. Burgdorf, for \$468.39; it is, this 13th day of June, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary thereof be shown on or before the 15th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 15th day of July, A. D. 1883.

By the Court.

CHARLES P. JAMES, Justice.

A true copy.

Test: 24-3 E. J. MILES, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. June 16, 1883.

In the matter of the estate of John W. Starr, late of the said District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah M. Starr.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of July, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: 24-3

H. J. RAMSDALL, Register of Wills.

**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ANDREW J. BIEDLER, Executor.

EDWARDS & BARNARD, Solicitors. 24-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Andrew Bothwell, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

GEORGE L. SHERIFF,  
ALMARIN C. RICHARDS,  
Executors.

24-4

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louise Wagner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

HENRY WAGNER, Executor.

CHAS. A. WALTER, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 12, 1883.**

In the matter of the Will of Michael Reuter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles Walter.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of June, 1883.**

SONS OF TEMPERANCE NATIONAL MUTUAL RELIEF SOCIETY. No. 5567. Eq. Doc. 23.

V. ANASTASIA HIGGINS ET AL.

On motion of the plaintiff, by Mr. S. M. Yeatman, its solicitor, it is ordered that the defendants, Anastasia Higgins and Eli Higgins, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 24-3 E. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

EMMA J. WINGENDER, Guardian. No. 5567. Eq. Doc., 23

V. WILLIAM B. DOUGHERTY.

Upon hearing the report of Thomas W. Fowler, trustee, showing the sale of lot seventy-five (75), in square 120, at the price of thirty-two cents per square foot, it is, this 15th day of June, 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of July, 1883. Provided, that a copy of this order be published in the Law Reporter once a week for three weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. 24-3 Test: E. J. Meigs, Clerk.

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, sitting in Equity, the 14th day of June, 1883.**

THE NATIONAL SAVINGS' BANK, of the District of Columbia. No. 1886. Eq. Doc. 22.

V. SAMUEL ADAMS ET AL.

The report of Benjamin P. Snyder, trustee in the above entitled cause, filed this day therein, shows that he has sold the premises described with bill to Henry T. Greer, for the sum of \$5,700 cash, at public auction. Upon consideration of the said report, it is, this 14th day of June, A. D. 1883, ordered, that the said sale be and the same is in all respects, including the modification of the terms of sale to a cash payment in full, hereby ratified and confirmed unless cause be shown to the contrary within thirty days from the date hereof. Provided, nevertheless, that a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before the expiration of said period of thirty days.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 24-3 E. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1883.

24-3 JOHN W. HUNTER, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 15, 1883.**

In the case of Joseph F. Hodgson, Administrator of John B. Castelli, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of July A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Samuel C. Rumb, Executor, of George N. Hopkins, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 13th day of July, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
WM. T. JOHNSON, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the matter of the Estate of William Lilley, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Frederick B. Lilley.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CHITTENDEN & MACKAY, Solicitors. 24-3

**Legal Notices.**

The S. Lu Mining Co. of W. Va., will hold their first meeting at the residence of the President of the Co., June 23d at 7:30 p. m.

22-3

A. P. STEWARD, Secretary.

**CHANCERY SALE OF VALUABLE UNIMPROVED PROPERTY ON THE EAST SIDE OF FOURTEENTH (14th) street northwest, between N street and Rhode Island Avenue, and on south side of Rhode Island Avenue, between thirteenth (13th) and fourteenth (14th) streets.**

**EXCELLENT OPPORTUNITY FOR CAPITALISTS: A CHANCE FOR A GOOD INVESTMENT!**

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the twenty-first (21st) day of December, 1882, in Equity cause No. 7,672, Equity docket No. 21, we will offer for sale, by public auction, in front of the premises, on **MONDAY, June the eighteenth (18th), 1883, at five (5) o'clock p. m.**, lots four (4), six (6) and eight (8), of Heitmueller's recorded sub-division of square numbered two hundred and forty-two (242), in the city of Washington, D. C., according to the sub-division of the said lots four (4), six (6) and eight (8), which the court by its order passed in said cause, has authorized us as trustees to make, and which sub-division is as follows: lot four (4) into three lots, each fronting twenty-two (22) feet and eight (8) inches on Fourteenth (14th) street; lot six (6) into three lots, each fronting twenty-two (22) feet and eight (8) inches on Fourteenth (14th) street—all of said sub-divisional lots to be bounded by the rear line of the present lots, and the sub-division of said lots four (4) and six (6) to be made by parallel lines at right angles with Fourteenth street: lot eight (8), fronting on Rhode Island Avenue, to be subdivided into three lots of equal length and fronting on Rhode Island Avenue, the one bounding on the alley to be twenty-six (26) feet wide and the other two each twenty-one (21) feet in width. By this sub-division we make in all nine (9) lots for sale, each of which is an eligible site for building purposes.

The terms of sale as prescribed by the decree of the court are: One-third cash, and the residue in one and two years from day of sale, with interest from day of sale, or all cash, at option of the purchaser. The deferred payments of any purchase money are to be secured by withholding deed or by taking mortgage or deed of trust on property sold. All unpaid taxes and assessments are to be paid out of the proceeds of sale. If these terms of sale be not complied with within six (6) days a resale will be made at cost and risk of the delinquent purchaser. A deposit of two hundred dollars (\$200) on each lot will be required by trustees on acceptance of bid. By the decree the trustees are empowered to postpone the sale from day to day in case all the property be not sold on the day advertised. All conveyancing is to be at purchaser's cost.

GEORGE F. APPLEBY, } Trustees.  
WILLIAM E. EDMONSTON, }  
Offices, 420 8th street, northwest.

THOS. E. WAGGAMAN, Auctioneer. 22-1

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Fisher A. Foster, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day June, 1883.

WILLIAM B. SNELL, Executor.

B. F. LEIGHTON, Solicitor. 22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of Freehold, New Jersey, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Howell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber or his solicitor, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

WILLIAM S. THROCKMORTON, Administrator.  
C. D. FOWLER, Solicitor, 605 D street, n. w. 22-5**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Oscar M. Lackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

OLARA C. LACKEY, Executor,

JAS. H. SAVILLE, Solicitor. 22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benjamin F. Gridley, late of Providence, Rhode Island, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of June, 1883.

JAMES H. GRIDLEY, Administrator, 22-5

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration a. t. a., on the personal estate of Margaret A. Barrett, late of Cincinnati, Ohio, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of May, 1883.

WM. T. S. CURTIS, Adm'r. c. t. a. 22-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.**

In the matter of the Estate of Washington Danforth. Application for Letters of Administration on the estate of Washington Danforth, of Vicksburg, Miss., formerly of the District of Columbia, has this day been made by Daniel O'C. Callaghan, at the request of James H. Danforth, brother of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of the District of Columbia, and some newspaper published in Vicksburg, Miss., previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: 22-3 H. J. RAMDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Prince William County, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James O. Reid, late of the U. S. Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY M. HIGGINS, Administrator.

Witness: Geo. E. JOHNSON.  
O. STROMS, Solicitor. 22-5**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of May, 1883.**

REBECCA YOUNG } No. 3,561. Eq. Doc. 22.

CORNELIUS V. YOUNG. }  
On motion of the plaintiff, by Mr. John J. Wood, her solicitor, it is ordered that the defendant, Cornelius V. Young, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 22-5 E. J. MARSH, Clerk.

*Legal Notices.***CLERK'S OFFICE OF THE SUPREME COURT OF the District of Columbia. May 31, 1883.**

I certify that Dorsey E. W. Carter, has filed in the Supreme Court of the District of Columbia, a petition praying that he may have his name of Dorsey E. W. Carter, changed to Dorsey E. W. Towson, alleging as his reasons for filing the same that Dorsey E. W. Towson, is his real and proper name, which was changed during his minority, and he desires to resume the name of his ancestors.

Witness my hand and the seal of said court this 31st day of May, 1883.

23-3

E. J. MEIGS, Clerk.  
By M. A. OLANOY, Assistant Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Abby L. Bodfish, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1883.

F. D. SEWALL, Administrator.  
J. W. & GEO. L. DOUGLASS, Solicitors. 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 4, 1883.**

In the case of William H. Young, Executor of James A. Barr, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
SAM'L. C. MILLS, Solicitor. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Washington, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

CHARLES R. KENGLA, Administrator.  
CARUSI & MILLER, Solicitors. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John S. Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

BERTHA HOPKINS, Administratrix.  
HARRIS & THOMAS, Solicitors. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Dibley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

G. W. CLARK, Administrator. 23-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Berry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1883.

CHAS. H. ORAGIN, Jr., Executor. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.

NOBLE JOHNSON, Executor.  
GEO. F. GRAHAM, Solicitor. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Timothy Sullivan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

RICHARD E. ORAWFORD, Executor. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis A. Ashford, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

ISABELLA W. ASHFORD, Executrix.  
GEO. F. APPELBY, Solicitor. 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George W. Collins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1883.

ALICE COLLINS, Executrix.  
W. B. WEBB, Solicitor. 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 6, 1883.**

In the case of Julia T. Scott, Executrix of Gustavus H. Scott, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
JAMES G. PAYNE, Solicitor. 23-3

**Legal Notices.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 5, 1883.**

In the matter of the Will of Sarah H. B. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **23-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, June 7th, 1883.**

**FRANCIS D. SHOEMAKER ET AL. v. No. 8,631. Eq. Dec. 23.**

**EDWARD SHOEMAKER ET AL.**  
It is by the court, this 7th day of June, 1883, ordered that the offer to purchase the real estate in said cause mentioned made by William M. Galt, and reported by Charles H. Oragin, Jr., and William A. Gordon, trustees, be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 9th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 9th day of July, 1883. The report states the amount offered to be \$10,000.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **23-3 E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. June 6, 1883.**

**CHARLES W. PROCTOR v. No. 8,693. Equity Docket 23.**

**MARY E. PROCTOR.**  
Notice of the pendency of the petition for divorce in the above entitled cause is hereby given to the defendant; and it is ordered that the defendant cause her appearance to be entered herein on or before the commencement of the term occurring forty days after this day, otherwise the court will proceed to hear and determine said cause.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **23-3 E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Emily Johnson, formerly of Frederick, Md., late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by John H. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **23-3 H. J. RAMSDELL, Register of Wills.**  
**WORTHINGTON & HALL, Solicitors. 23-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 25, 1883.**

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Bergman and Laura Magee.

All persons interested are hereby notified to appear in this court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: **23-3 H. J. RAMSDELL, Register of Wills.**

**Legal Notices.**

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Susan Falconer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next: they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of May, 1883.

**JAMES CAMPBELL,**  
**MICHAEL C. WEAVER,**  
Administrators.

**W. J. NEWTON, Solicitor. 23-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**MARY ANN HOLMEAD ET AL. v. No. 8,277. In Equity.**

**COLUMBUS J. ESLIN ET AL.**  
It is, this 29th day of May, A. D. 1883, ordered, that the report made by A. A. Lipscomb, trustee in this cause, of an offer to purchase lots twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42) and forty-three (43), of John J. Johnson's recorded sub-division of part of "Map Pleasant" and "Pleasant Plains" belonging to the estate of the late James Eslin, deceased, a copy of which is filed with said report, for the sum of \$37,000, to be paid as provided in the original decree, passed in this cause the 6th day of December, A. D. 1882, be and the same is hereby affirmed unless cause to the contrary be shown on or before the 29th day of June, A. D. 1883. Provided, a copy of this decree be published in the Washington Law Reporter and the Washington Evening Star once a week for three weeks prior thereto.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **23-3 E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity, May 24, 1883.**

**GEORGE W. YEABOWER ET AL. v. No. 7,779. Eq. Dec. 22.**

**HELEN R. KAGLA ET AL.**  
William J. Miller and Samuel Maddox, trustees, having reported that they have sold the real estate in the proceeding in this cause mentioned, to wit: all of lot No. 227, and part of lot No. 226, in Beatty and Hawkins' addition to Georgetown, to Philip Young, at and for the sum of \$5,210; it is, this 24th day of May, A. D. 1883, by the court ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 25th day of June, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once in each of three successive weeks before said last-named day.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: **23-3 E. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Orphans' Court Jurisdiction.**

**IN RE CHARLES E. GIBBS**  
Guardian of

**ELIZABETH A. MCGREW.**  
Upon consideration it is, by the court this 31st day of May, A. D. 1883, ordered, that the sale herein reported by Andrew J. Simpson, be ratified and confirmed on 6th day of July next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for each of three successive weeks in the Washington Law Reporter before said last mentioned day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: **23-3 H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph Reese, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1883.

**EMMA L. REESE, Executrix.**  
**B. W. MCPHERSON, Solicitor. 23-3**



## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 1st day of June, 1883.

BENJAMIN B. HILSON, Complainant.

No. 8505. Eq. Doc.

JOHN DEVLIN ET AL., Defendants.

On motion of the plaintiff, by Mr. F. P. B. Sands, his attorney, it is ordered that the defendants, John Devlin, William M. Dickinson, Nathaniel P. Chipman, Epaphras S. Sherman, A. Heydenrick and George Whitney, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, CHAS. P. JAMES, Justice.  
A true copy. Test: 22-3 E. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of Baltimore, Md., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Amanda F. Beveridge, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers therefor, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of June, 1883.

DAVID PINKNEY WEST,  
JOSEPH WHYTE,  
Administrators.

22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles McHugh, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers therefor, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1883.

MARY MCHUGH, Administratrix.  
B. H. WEA, Solicitor.

22-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. M. St. John, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers therefor, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1883.

MARY F. ST. JOHN,  
Administratrix, 18 9th st., n. e.

22-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jeannie O'Connor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers therefor, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1883.

22-3 CHARLES W. ELDRIDGE, Administrator c. t. a.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, May 25, 1883.

In the matter of the Will of Bridget McNamara, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Patrick H. McNamara.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
O. D. BARRETT, Solicitor.

22-3

## Legal Notice.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.

In the matter of the Will of Noble Young, late of the city of Washington, in the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Felix Nemegyei, Alexander Strauszard and Harry C. Egbert.

All persons interested are hereby notified to appear in this court on Friday, the 29th day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, CHAS. P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
J. J. DARLINGTON, Solicitor.

22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, June 1, 1883.

In the matter of the Will of Ezekiel Hughes, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Charles H. Cragin, Jr.

All persons interested are hereby notified to appear in this court on Friday, the 23d day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters of Administration, will annexed, on the estate of said deceased, should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, CHAS. P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.  
O. H. CRAGIN, JR., Solicitor.

22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

WILLIAM E. CLARK

No. 8,777. Equity.

ALBINA SEIBERT ET AL.

Job Barnard, trustee herein, having reported a sale of block 28; lots No. 1, 2, 3, 4, 5, 6, 7, 8 and 9, in block 29; and part of lot 11, in block 30, fronting 19.37 feet, in Gales street, and 25 feet on 14th street, all in sub-division of part of "Long Meadows," made by said trustee and others, to William E. Clark, for \$4,125; and a sale of block 27, in said sub-division, to Felix P. Seibert, for \$6,000.

It is, this 23d day of May, 1883, ordered, that said sales be confirmed on the 23d day of June, 1883, unless good cause to the contrary be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before that day.

By the Court, CHAS. P. JAMES, Justice.

A true copy. Test: E. J. Meigs, Clerk.  
EDWARDS & BARNARD, Solicitors.

22-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JOHN THOMPSON ET AL.

No. 1,026. Equity.

THOMAS ARNOLD ET AL.

Wm. F. Mattingly, trustee, having reported that he sold on May 1, 1883, at public auction, said part of sub-lot No. 22, in square 197, described in this cause, to John Curtis, at 75 cents per square foot, it is this 24th day of May, A. D. 1883, ordered, that said sale be finally ratified and confirmed on the 18th day of June, 1883, unless cause to the contrary be shown before said day.

By the Court, CHAS. P. JAMES, Justice.

True copy. Test: 21-3 E. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, Sitting in Equity, May 23, 1883.

CATHARINE OURAND

No. 8423. Eq. Doc. 22.

GEORGE E. OURAND ET AL.

The trustee in this cause having reported the sale of lot 30, in Turtone's sub-division of part of square 130, for the sum of \$3,300, it is, this 23d day of May, 1883, ordered, that the said sale be ratified and confirmed unless objections thereto be filed herein on or before the 23d day of June 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks prior to the said last-mentioned date.

By the Court, CHAS. P. JAMES, Justice.

A true copy. Test: 21-3 E. J. Meigs, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - June 23, 1883.

GEORGE B. CORKHILL - - - - - EDITOR

## Liability of Executor for Negligence in Collecting Debts.

The question what degree of negligence in respect to the collection of debts will charge an executor with those which are lost to the estate by non-collection was discussed by the Court of Appeals in Kentucky in the case of *Frazier v. Cavanagh* (Ky., Feb. 16, 1883), 1 Ky. L. Rep. & J., 711.

The executors having resigned, and an administrator with the will annexed having been appointed, with the direction that they turn over to him the assets, he refused to receive uncollected accounts and notes, demanding the money value or amount thereof, and they then brought this action for a final settlement of their accounts.

The answer did not allege negligence, but simply failure to collect; and the court below charged them with all the uncollected claims. The Court of Appeals held, reversing this decision, that they were only liable for such as were lost by negligence, and the pleading might be amended in this respect, but that it would not be necessary to show gross negligence. The court says:

"Where a loss is occasioned in consequence of trustees having taken no steps at a proper period to get in the trust property, they will be liable for the loss" (2 W. and T. Lead. Cas. p. 1753, are authorities cited). And in the case of *Thomas v. White, &c.* (2 Tilt., 184), the administrator had failed to sue until the claim was barred by limitations, yet the court says: "No doubt an administrator or executor may be made responsible for such losses, occasioned by negligence, but to charge him it is necessary that he should have acted with bad faith, or with some willful default or fraud or gross negligence." But we are inclined to the opinion that the court in *Thomas v. White* attempted to establish a rule for the protection of the fiduciary that is neither sustained by reason nor the weight of authority. The true doctrine seems to be that if the debt is lost to the estate by the negligence of the executor or administrator, he should be liable therefor, although he may not be guilty of "gross negligence." A learned author has gone so far upon the other side as to say: "If the executor, by his delay in commencing an

action, has enabled the debtor of his testator to protect himself under a plea of the Statute of Limitations, this amounts to a *devastavit*" (2 Will. on Executors). But we apprehend that mere delay itself should not make him liable, regardless of the reasons for the delay. Personal representatives are liable for the management of their trusts, as bailees and agents are generally, and must answer, and only answer, for such losses as are occasioned by actual or constructive negligence or willful misconduct (*Tuggle v. Gilbert*, 1 Dew., 340; *Heming v. Jones*, 12 Bush., 504; 2 Leading Cases in Equity, 1791; *Wilkinson v. Hunter*, 37 Ala., 272. "Although an executor or administrator should have taken no steps at all to obtain payment of a sum of money, if it appears that if he had done so they would have been, or there is reasonable grounds for believing they would have been, ineffectual, then he is exonerated from all liability." (2 Lead. Cas. in Equity, 1754, and authorities cited.)—*Daily Register*.

## Supreme Court District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

THE UNITED STATES, ex rel. EMINEL P. HALSTEAD, Administrator of the estate of JOHN N. and JOHN J. PULLIAM,

vs.

A. U. WYMAN, Treasurer of the United States.

AT LAW. No. 24,413.

(Concluded from last week.)

With due submission to the distinguished jurist, I venture the statement that the facts disclosed by our records do not bear out the assertion that it has not been the practice of the Government to pay claims to local administrators appointed by the Orphans' Court of the District. The records of that tribunal abundantly show that from its origin it exercised the power of granting letters here upon property within the District of Columbia belonging to non-residents, whether that property consisted of claims against the Government, or other "debts due to, or just claims of the deceased."

The dockets of administration very seldom furnish any memoranda indicating whether the deceased was a resident or a non-resident, and thus the number of references suggested in that manner are fewer, in all probability, than the facts would warrant. But the cases where such memoranda occur have been examined, and two hundred and seventeen instances are found from 1801 to 1812 inclusive,



where letters were granted on the estates of non-residents; by far the larger number of whom are described as attached to the army or navy, or marine corps.

The first of these cases was in July 22, 1802, where letters were issued on the estate of a sailor late of the U. S. frigate *President*. In the same year letters were granted to the executors of Gen'l Washington on his personal estate in this District. In 1805 administration was granted to Capt. Dan'l Cormick on the personal estates of twenty-nine persons late of the U. S. Marine Corps. It seems almost certain that the object of this administration was to obtain pay or prize money due by the Government, as was expressed on the docket entries in a later case, "to enable the father of Wm. Rogers to receive from the Government the pay due his dead son."

In 1807 letters were granted on the personal estate of Chancellor Hanson, of Maryland.

The granting of such letters would naturally have been less frequent after the passage of the act of 1812, although it continued in each year from that time to a greater or less extent. Thus from 1813 to 1825 inclusive, letters were granted on the estates of non-residents in one hundred and seventy cases. Selecting another period, I find one hundred and twenty such cases, between 1836 and 1844 inclusive; and selecting still another period, fifty-nine such cases were between 1874 and 1877 inclusive.

The case of *Mackey v. Coxe* in 18 Howard, already cited, shows that the Treasury officials about 1840, required the agent of the administrator of the deceased to take out letters in the District before they would pay him the money due his intestate. As expressed by Justice McLean in the opinion of the court: "There appears to have been no creditors of the estate of Mackey in the District of Columbia, and letters of administration were obtained here, as necessary under the decision of the Treasury Department. So, in the year 1849, letters of administration were granted to Andrew Wylie upon the estate of Samuel Baldwin, described in the proceedings as a citizen of Pennsylvania, and the administrator thus appointed, collected from the Treasury a considerable sum of money awarded to the estate of the intestate under the treaty with Mexico. There was no pretense that there were other assets, and this payment was made while the act of 1812 was in force and eight years after the decision in *Vaughan v. Northrup* had been announced.

After the act of 1812 had been repealed the practice was continued, and though such ap-

plications were sometimes resisted, upon the authority of *Vaughan v. Northrup*, yet the court appeared to have no difficulty in granting the letters. A few of the more recent cases may be referred to here.

After the close of the war, the executrix of Horatio Ames, of Connecticut, where she had taken out letters, applied for letters to the Orphan's Court here, alleging that the expected assets consisted of a large claim against the Government for munitions of war furnished the Government. They were issued to her, and in 1871 application was made for their revocation, averring a waste of the moneys received from that source.

The application was granted, the objection appearing to have been made that under the act of 1812, the letters here were useless if not improper.

In 1875, however, after the repeal of that law, an application for letters here was made to the same court, and Nathaniel Wilson was appointed by Justice Olin, and gave bond in the penalty of \$160,000.

In the same year James P. Hamilton was appointed administrator of Benjamin Early, and charged himself in his account of assets with \$3,549.50, being "the amount received from the Treasury Department of the United States for cotton seized and used by the United States Government."

In 1876 letters were granted to Charles D. Pennebacker, upon the estate of one Snyder, of Hardin county, Kentucky; the petition alleging "that Snyder had assets in the District of Columbia consisting of one U. S. Treasury draft, No. 5332, for \$713," which draft was then in the hands of the petitioner as the attorney of the deceased.

And on the same day letters were granted to Pennebacker on the estate of one Branham, of Kentucky, the assets being described as "a claim allowed against the Government."

In 1879, John Campbell applied for letters upon the personal estate of one Springer, of New York, alleging that, as administrator of Springer under letters issued at the place of the domicile, he had brought suit in this District in respect of a claim due the estate; but that the defendant, in his plea, had denied the right of a foreign administrator to maintain the suit, which plea had been sustained by the General Term; and he accordingly applied for the ancillary letters for that purpose, and the letters were issued accordingly.

In January, 1880, Allan Rutherford, of North Carolina, applied for and obtained letters upon the personal estate of F. W. Beers, of New York, averring that he was a creditor of

the deceased, and that "the only property or personal estate left by the deceased is a Treasury draft, payable to the decedent, and the court issued the letters.

And in March, 1881, Mr. Henkle, a member of this bar, applied for letters of administration upon the personal estate of John P. Sherburne, who, it was charged, resided in San Francisco and had recently died there, leaving personal estate in the District of Columbia, consisting of a certain claim of about \$1500 against the United States, then in the Court of Claims. The petitioner averred that he had been the attorney of the claimant and as such was a creditor, and as the Attorney General was urging the trial of the cases, it was necessary that an administration be granted here, and it was done accordingly.

The case of Gen. Burnside occurs to me as one of the more recent cases. That distinguished and excellent gentleman died in Rhode Island, of which State he was a Senator in Congress. His administrators there applied for letters here in respect of his personal assets here, and passed their accounts here as required by law.

In 1876, a large number of letters were granted to Mr. Lowndes, upon the estates of Hawaiian sailors who had claims before the Alabama Claims Commission, and similar letters were recently granted to the same gentleman in 76 similar cases, where there had been administration in the place of their domicile; but it was represented to the Orphan's Court that the rules of the Alabama Commission required that letters of administration should be taken out before the claims could be considered.

In fact, if the practice of a tribunal and its frequent claim of jurisdiction can be regarded in any case as proof tending to show the rightfulness of the claim, the consistent practice of the Orphans' Court of the District of Columbia in this particular cannot fail to have great weight in support of the jurisdiction claimed.

I am unwilling to concede that this constant practice of our predecessors and of ourselves is unwarranted, and that the Government officials have also been hitherto acting upon a similar incorrect construction of the law. On the contrary, I believe that since the repeal of the act of 1812, the jurisdiction of the Orphans' Court of the District of Columbia to issue letters of administration, whether the property alleged to belong to the non-resident deceased consists of ordinary personal effects, or of claims or debts due by the deceased, whether by private individuals or by the Government, is clear, and that it is its

duty to grant the letters upon proper application and compliance with the requirements of the law.

We are all of the opinion that the writ should issue, requiring the Treasurer to make payment of the amounts specified in the three drafts, to the petitioner as administrator of John J. and of John N. Pulliam.

We cannot regard the decree of the Equity Court referred to in the petition, as effective at all against the administrator in Tennessee, since he is not amenable to suit as administrator in this jurisdiction.

The reservation in that decree, which requires the District administrator to account fully of the personal estates of his intestates, will allow full opportunity for a contest by those interested, if they believe Keyser's claim is not properly supported by proof.

The several equity causes mentioned in this opinion have been referred to only for the purpose of showing that in those instances funds in the Treasury have been considered as localized here, and only for that purpose. Nor are we to be understood as agreeing to release in the slightest degree the wholesome principle founded alike upon reasons of public policy and convenience, that exempts from attachment funds in the hands of Government officials or other public officers.

Mr. Justice Cox, while concurring in the conclusion of the court, said that he dissented from the reasons given therefor, and thereupon read the following opinion:

The petitioner, Halstead, shows, that on the 17th of June, 1882, the Treasurer issued certain drafts, in pursuance of appropriations made by Congress, in favor of John J. Pulliam, in his own right, and another to him as executor of John N. Pulliam, payable at the Treasury in Washington, and delivered them to the petitioner as his attorney. John J. Pulliam having died, petitioner subsequently obtained from the Orphans' Court of this District letters of administration on the estates of both the Pulliams. He also sets forth that in a certain chancery cause he was directed by decree of this court to indorse these drafts and collect them at the Treasury, and distribute the proceeds in a manner set forth in the decree; that in pursuance of the decree he indorsed the drafts and demanded payment of them of the Treasurer, which was refused, although the Treasurer has funds in his possession for their payment; and he asks a mandamus requiring him to pay them to the petitioner.

The Treasurer answers that he is ready to pay to anyone legally authorized to receive

the money, but that the domicile of the Pulliams was in Tennessee, and there was no assets of theirs in the District of Columbia, and the Orphans' Court had no jurisdiction to grant letters of administration on their estates, and the letters of the petitioner are void; that even if not void, they conferred no right to assets out of the District of Columbia, and that the debts represented by these drafts have no local situs here, but belong to the administrator of the domicile; that the administrator of the domicile and the respondent were not parties to the decree referred to in the petition, and not bound by it.

I do not deem it necessary to consider the effect of the decree above referred to, but shall confine my examination of the case to the effect of the letters of administration issued to the petitioner and the extent of the authority conferred by them.

I understand the law as to the rights of executors and administrators, with respect to property in different jurisdictions, to be as follows:

An executor or an administrator appointed at the domicile of the deceased is entitled to the personal estate situated everywhere, subject to the rights of local creditors, to be secured by local administration, but he cannot maintain a suit to recover any property outside of the jurisdiction where he receives his letters. If such a suit becomes necessary in order to possess himself of the property, he must either obtain new letters or procure another to take them out in the jurisdiction where the property is. This new administration is called an ancillary administration, and the assets received under it are to be applied to the payment of local creditors, and the residuum, if any, is to be turned over to the administrator of the domicile for distribution under the law of that place. Among the assets which a deceased may leave are debts due him. As Lord Abinger says in *Atty. Gen'l v. Bonevires*, 2 M. & W., 171; *Story's Conflict of Laws*, 421, and *seq.*:

"As to the locality of many descriptions of effects, household and moveable goods for instance, there never could be any dispute. But to prevent conflicting jurisdictions between different ordinaries with respect to choses in action and titles to property, it was established as law, that judgment debts were assets for the purposes of jurisdiction where the judgment is recorded; leases where the law lies; specialty debts where the instrument happens to be; simple contract debts where the debtor resides at the time of the testator's death; and it was also decided, that as bills of exchange and promissory notes do not alter the nature of

the simple contract debts, but are merely evidences of title, the debts due on these instruments were assets where the debtor lived, and not where the instrument was found. In truth, with respect to similar contract debts, the only act of administration that could be performed by the ordinary would be to recover or receive payment of the debt, and that would be done by *him* within whose jurisdiction the debtor happened to be. These distinctions being well established, it seems to follow that no ordinary in England could perform any act of administration in his diocese with respect to debts due from persons resident abroad," &c.

It would follow that, at common law, no executor or administrator of a person domiciled and dying in one of the States could, in virtue of letters obtained there, recover a simple contract debt due to the deceased from a resident of the District of Columbia. That could only be effected by taking out letters anew here.

This was changed by an act of June 24, 1812, which provided that such executors or administrators might maintain any suit or action, and prosecute and recover any claim in the District of Columbia, in the same manner as if their letters had been granted by the proper authority in said District. But this act was repealed by being omitted from the revision of 1874, and the law stands the same as it was before the act passed.

If an administrator appointed in a State should come within this District and, without taking out new letters here, should, in fact, collect a debt due here which the debtor voluntarily pays him, "It would seem, on general principles," says Judge Story (*Conflict of Laws*, p. 424), "he would be liable as an executor *de son tort*, or person intermeddling with such assets without rightful authority derived from the local authorities under a new grant of administration here, and might be sued by creditors here."

And suppose further, that after such payment, administration should be granted to another person here, would it be any bar to *his* action against the debtor, that the latter had already paid the debt to *another administrator*, who had no right to demand it, in virtue of his original administration? And suppose a contest to arise between the original and local administrators in relation to the administration of the debt so received, as assets of the deceased, could the *original* retain it against the will of the *local* administrator? Judge Story puts both these questions, and evidently thinks that they should both be answered in the negative.

The Supreme Court, however, have since held, in *Wilkins v. Ellett*, 9 Wall., 741, that a voluntary payment by a debtor to a domiciliary administrator of another jurisdiction is good. And this was re-affirmed in the same case again before the court at the last term.

Subject to the contingency of a claim by a local administrator, undoubtedly, a receipt to a debtor anywhere by the administrator of the domicile would be a discharge, because the domicile is the ultimate destination of all personal assets wherever situated.

The question next presents itself, in what light, as assets, is a debt from the United States to a creditor domiciled and dying in a State to be regarded? I speak now of a general, simple contract indebtedness not merged in or paid by any special obligation though it may have been appropriated for. Is it assets at the domicile of the deceased creditor, or is the District of Columbia to be considered the *habitat* of the debtor, so as to make it local assets there?

This question came before the Supreme Court in the case of *Vaughan et al. v. Northup et al.*, 15 Pet., 1.

James Moods resided in Kentucky and died there; Northup took out administration on his personal effects in that State, and, in virtue of his letters, received from the Treasurer of the United States a large sum of money. The complainants, claiming to be next of kin of James Moody, filed a bill in the District of Columbia against Northup, who happened to be found here, for an account and distribution of the personal estate.

Now, if this debt of the Government stood on the same footing as the debt of a private individual living here, then, on the grounds already referred to, Northup might have been held liable to account for it here as *executor de son tort*. It is true that the act of 1812, then in force, converted all debts due in this District to a non-resident decedent into *general*, as distinct from *local* assets, but, as to *Government debts*, the courts held, independently of the statute, that *such* was their *intrinsic character*, in the following language: "But it has been suggested that the present case is distinguishable because the assets sought to be distributed were not collected in Kentucky, but were received as a debt due from the Government at the Treasury Department at Washington, and, so, constituted *local assets within this District*. We cannot yield our assent to the correctness of this argument. *The debts due from the Government of the United States have no locality at the seat of Government*. The United States, in their sovereign capacity, have no particular place

of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile. On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether at the seat of Government or at any other place where the public funds are deposited. If any other doctrine were to be recognized, the consequence would be that before the personal representative of any deceased creditor, belonging to any State in the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take out letters of administration in this District for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law."

This was decided in 1841. In 1855, in the case of *U. S., use of Mackey, v. Coxe*, 18 How., 100, the case was again referred to, and part of the language above cited was repeated with approbation.

In that case the attorney of administrators of Mackey, appointed in the Cherokee Nation, adjusted a claim of Mackey at the Treasury Department. The Department was unwilling to pay him on his power of attorney, and required him to take out letters of administration here, which he did. He received a large sum of money, and then, as attorney for the administrators of the domicile, receipted to himself as local administrator. On his way home he was accidentally killed and the money lost. The next of kin sued Coxe, one of the sureties on his bond given here. There was no question between the original and local administrators. They were substantially one and the same, *i. e.*, the local administrator was the attorney of the others, and took out letters here for their benefit, in order to get the funds for them. There were no creditors here, and the court held, following the language in *Vaughan v. Northup*, that the domiciliary administrators could receipt for the money to whoever held it here, and consequently to the local administrator, and in that way discharge his sureties.

I am not aware that the Supreme Court has ever recalled the language employed in *Vaughan v. Northup*, above cited. And it

seems to be fully justified by recognized general principles.

We are accustomed to speak of debts due by the United States as *moneys in the Treasury*. But as far as that might import designated property in a certain place, the expression is incorrect, even a congressional appropriation fails to earmark any specific fund, or confer upon a creditor a lien on property in it. It is nothing more than a recognition of the debt, and an authority to pay it out of the general treasure of the Government.

Nor has the Treasury itself any locality bounded by territorial limits.

The act of August 6, 1846, ch. 90, embodied in General Revised Statutes, Sec. 359, provided that, "the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, &c., and the fire-proof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States."

It proceeds then to direct that the mints at Carson City and Denver, and the pay office at Boise City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct; that there shall be assistant treasurers at ten different cities, including Boston, New York, New Orleans, and San Francisco; that the rooms assigned to them shall be appropriated for the safe keeping of the public moneys deposited with them respectively; and it makes all public moneys paid into any depository subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law.

It is true that in *Cooke v. United States*, 91 U. S., 389, the expression is used, "that the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer, are by law the Treasury of the United States." But that had no reference to any such question as the present. The only question in the case was, whether certain Treasury notes purchased by the assistant treasurer at New York were thereby so finally paid and retired that the Secretary of the Treasury could not return them as spurious. And the court argued that the power to retire them was conferred on the Secretary; that his department is at Washington, in which all claims must be adjusted; that the retirement of these notes involved the adjustment of a claim, and that cannot be considered as done until the notes are forwarded to Washington and ex-

amined, and finally received or rejected. The expression above mentioned was incidentally used in this argument, but had no reference to any such question as the situs of a debt of the United States for the purposes of administration.

Territorially, then, the Treasury is co-extensive with the Union, and the Treasurer, who is authorized, by warrant of the Secretary of the Treasury, to pay a debt appropriated for by act of Congress, may pay it out of funds in New York or San Francisco, as well as out of those in his vaults in Washington. It is impossible to say, then, that an appropriation of money gives to the creditor of the United States, a right of property in any particular deposit of coin in the city of Washington, and within the territorial jurisdiction of this court. It does not advance the creditor a step beyond where he was before as to any rights of property, but leaves the debt of the Government still a mere general obligation to pay a liquidated sum, which, as the Supreme Court say, is not an obligation to pay at the city of Washington, more than at any other place, and is not therefore property having its situs at Washington. And, consequently, a domiciliary executor or administrator of a deceased creditor of the Government is not under the necessity of administering here on a claim against the Government, nor has a local administrator, appointed here, the exclusive right to demand it of the Government, as property situated necessarily and exclusively here, and which he only could sue for if the Government were sueable in our court.

If the converse of this were true certain other serious consequences must follow. If a debt due from the United States constituted local assets here, of a deceased creditor, it must be equally true that during the lifetime of the creditor it is property within the jurisdiction and subject to the process of the court, as completely as a stock of merchandise would be, in the hands of the Treasurer, as bailee of the owner. It would be subject to be attached as the property of non-residents, or by way of execution. It would be a *res* with respect to which non-residents could be brought into court by publication, and which could be acted upon directly by decree of the court. The custodian of the fund would be as much subject to the direct orders and decrees of the court as any private bailee. But this court, I think, has uniformly declined to exercise such a jurisdiction.

In 1825 one Vasse filed his bill in the Circuit Court of this District to enjoin certain parties from receiving and the Treasurer of the United States from paying to them, the

amount of an award made by a board of commissioners appointed under a treaty with Spain. The real defendants were non-residents, and publication was made against them. The court said: "The first question is, has this court jurisdiction as to any of the defendants against whom it can make a final decree? The fund out of which the claims are to be paid is in the Treasury of the United States; where is that? The Treasurer resides at Washington, and the head of the Department, but is the money there? Can the fund be said to be within the jurisdiction of the court? We think not. The officers of the United States holding the public money, as money of the United States, are not accountable to anybody but the United States, and are not liable at the suit of an individual, on account of having such money in their hands. The defendants, Comegys, Pettit and Mifflin, against whom only an effectual decree can be made, are not within the jurisdiction of the court. . . . We think, therefore, that the bill ought to be dismissed."

With some departures from this rule, expressly authorized by statute, and others which I think were inadvertent, I think this opinion has always prevailed in both the old circuit court and this court. Certainly, I think I can say, that, within my recollection, it has been the tradition of both courts, that the court would not assume to decree directly against the Secretary or the Treasurer, the disposition of money in the Treasury (so-called), but would simply decree against the parties in interest properly before the court, and that the Treasury Department, while it would not admit the authority of the court directly to dispose of funds under its control, would nevertheless, so far respect any decision of the court and any decree made by it, as *between and against the parties interested*, as to apply the money in conformity with such decree.

In 1836, in the case of *Ridgway v. Hayes*, while the circuit court refused, on the merits, to enjoin the Secretary of the Treasury from a certain disposition of a Spanish award, Judge Cranch did, indeed, say that the fund in question was placed in the Treasury as a place of deposit only, and the United States were merely *trustees*, and he could not see why the United States, in cases in which they were merely *stakeholders*, should not submit to the decisions of the courts, but in that case it was unnecessary to decide as to the authority of the court to enjoin the payment of money out of the Treasury. This was, of course, mere obiter, and applicable to a different class of cases from the present.

In 1837 a bill was filed by Dutill's Adm'r v. Coursault, claiming a portion of a French award, and praying injunctions against its payment to other parties against the Secretary and the Treasurer. These appeared and answered, and raised the question of jurisdiction, but under protest as to this, professed themselves willing, nevertheless, to pay to the parties who shall appear entitled. The opinion of the court does not touch that question, but decides the merits only, and directs a decree to be prepared accordingly. The decree did, in form, direct the Secretary and Treasurer to pay, and this is the only case in which that occurred.

In 1840, one Metz, claiming as assignee in insolvency for Milnor, filed a bill in the circuit court of this District to enjoin Milnor from receiving and the Secretary of the Treasury from paying to him the amount of a claim against the United States, for which Congress had made an appropriation. The preliminary injunction issued, *sub silentio*, as prayed, and in the final decree the injunction was made perpetual, but the court decreed "that Metz be entitled to receive, from the Secretary of the Treasury, the sum of money in the said bill sought to be recovered," and seem to have carefully abstained from decreeing *that the Secretary pay the money*. The case went to the Supreme Court, and the statement of the case in the opinion of that court (16 Pet., 225) is, that "Metz filed his bill (in the court below) enjoining Milnor from receiving the money, and had a perpetual injunction," no notice being taken of the injunction against the Secretary. This is the single instance in the history of the court, I think, of a *final injunction* against the Secretary, except where it was authorized by *statute*, and evidently no question was made on the subject, because he had no interest in raising it. But the decree went no further as against him than an injunction, and declined to give active relief.

An act of Congress of 1849, ch. 108, passed to carry into effect the treaty with Mexico, as far as it related to claims of American citizens against Mexico, enacted that where parties claimed title to the awards made by the Mexican commission, they might give notice to the Secretary of the Treasury and file their bills in the Circuit Court of this District for injunctions and relief, and "*any injunction thereupon granted by the court shall be respected by the Treasury Department*." The same provision was extended to awards on claims against Brazil, by act of July 3, 1852, 10 Stat., 11.

Quite a number of suits were instituted under authority of these acts and among them

were the cases of *Dey v. Whitney* and *Clark v. Clark*, cited by my brother Hagner, in his opinion. But of course, these are not precedents, and furnish no authority, for the assertion of a general authority over money in the control of the Treasury Department—not subjected by express statute to the jurisdiction of this court.

These cases ran along for a number of years and probably while some of them were pending, Lockett et al. filed a bill in the Circuit Court to restrain one Pemberton from receiving and Secretary Marcy from paying to him the one half of a certain award against Great Britain, which they claimed as counsel fees. Although this kind of case had not been provided for by statutes like those above mentioned, the court and counsel both, probably failed to distinguish between them, and here again, *sub silentio*, a preliminary injunction went against the Secretary, as well as Pemberton. But no process was served upon the Secretary and the final decree was not against him at all. It was simply, that *Pemberton pay to the complainant* the money claimed. *Pemberton* appealed from this decree and it was reversed on the merits, but of course no question could come before the Supreme Court in reference to the Secretary of the Treasury. See *Pemberton v. Lockett et al.*, 21 How., 257.

Thus, it will be seen that there is no instance of a final decree being made against the Secretary of the Treasury respecting the disposition of a fund under his control, except in the case of *Dutliff v. Coursault*, in which the Secretary while reserving the question of jurisdiction, yet virtually submitted to such decision as the court might make; and in the cases above referred to, not arising under the Mexican and Brazilian award, the decrees were against only the parties in interest who were present in the court, defending, thus giving the court jurisdiction over these persons.

In the late case of *McManus v. Standish*, decided in 1881, reported in 1 Mackey, Judge Wylie, in reviewing this whole subject, declined to go further than to say that the practice of the court has been in favor of the jurisdiction of this court *where it had the parties before it* to decree as to them. It was a case of claim by counsel to part of a Mexican award made under a later treaty than the former one—that of 1868. The Secretary of State who had control of the funds was made a formal party but did not appear, nor did the court proceed to make any decree against him, although this was not a case of indebtedness of the United States, but the Secretary

was a mere stakeholder. All parties in interest were present in court and the decree was made between them.

In a still later case, not reported, relating to one of these same Mexican awards, although it was not money of the United States, where the parties were non-residents, the court expressly declined to take jurisdiction, which they might have done if the theory were correct that such monies were property within the local jurisdiction of the court. We must hold then, that a mere government indebtedness has no local situs here, simply because this is the seat of Government. What is the consequence?

The Supreme Court say, in *Wilkins v. Ellett*, *supra*, that “the original administrator therefore, with letters taken out at the place of the domicile, is invested with the title to all the personal property of the deceased, for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue, &c. It is true, if any portion of the estate is situated in another country, he cannot recover possession by suit without taking out letters of administration from the proper tribunal in that country, as the original letters can confer upon him no extra-territorial authority. The difficulty does not lie in any defect of title to the possession, but in a limitation or qualification of the general principles in respect to personal property by the comity of nations, founded upon the policy of the foreign country to protect its home creditors, &c.”

Ultimately, it is admitted on all hands, that the administrator of the domicile is entitled to all debts due the deceased. The only question is whether they may or must not first be administered in the jurisdiction where the debtors are and the debts are due and where they are considered local assets. But as the only ground for appointing a local or ancillary administrator is, that there are assets situated exclusively within the local jurisdiction, which could not be sued for and collected by a foreign administrator, but only by a local one, and since that cannot apply to a debt due from the United States, which is not situated exclusively within this district, and which the administrator of the domicile might clearly sue for *anywhere*, if the United States were suable generally, it follows that as between the local and domiciliary administrator, the latter would be entitled to the fund.

I am confronted, however, with a long standing practice apparently in conflict with this view.

There are many instances in which our



Orphans' Court have issued letters of administration, expressly to enable parties to represent claims against the United States or against foreign Governments, before Boards of Commissioners. It has not only been acquiesced in, but sometimes required by the Treasury Department, as in the Mackey case, *supra*. It has never been done, I imagine, where any question arose as to conflicting claims of non-resident administrators, but it has been done as a matter of convenience, where the domicile was unknown or distant or abroad. Now it is suggested that if the views before stated are correct, it would follow that all these administrations were void for want of jurisdiction in the court.

Although the practice of the Orphans' Court, with the concurrence of the Treasury officers, could not authoritatively set the question of law under discussion, it would still be matter of regret that it should be necessary to declare the practice in question wholly illegal. But this does not seem to be necessary.

And this leads me to consider a qualification of the general principle I have laid down, which I think may be fairly admitted, which is, in substance, that an indebtedness by the United States may or may not be local assets here, at the election of the Government. It is the privilege of the debtor and not of the creditor, or his representatives, to determine the question. The debt is not necessarily or conclusively such assets, so as to give to the local administrator a right to enforce its payment, but if the Government elects to make it such, it becomes assets which our Orphans' Court can take jurisdiction over and administer.

There is no statutory restriction upon the officers of the Treasury as to the place of payment of the public debts. It is fair to hold that they are at liberty to act upon considerations of public convenience, which are paramount to mere private convenience, while it is true that the United States is not exclusively in the District of Columbia, or its debt due exclusively there, it is also true that it is as much there as in the domicile of the creditor. And what is to prevent the Government from electing to pay its debt in the District only, and from considering the seat of Government as its *habitat* for that purpose. Practically, it will be seen, that nothing can prevent this. The administrator of the domicile would not be recognised here. He could not institute a proceeding like the present. He could not obtain a mandamus in any State. No State court would have jurisdiction to grant it. And no court of the United

States except this, has power to grant a mandamus, except when necessary to the exercise of other jurisdiction. If the Treasurer, therefore, chooses to recognise a local administrator in this District as a proper party to receive payment of a Government debt, it seems to be within his power to do so.

In the case of *Wilkins v. Ellett*, decided at the last term of the Supreme Court, it was held that where a debt due to a deceased person was voluntarily paid by the debtor at his own domicile in a State in which no administration had been taken out and in which no creditors or next of kin resided, to an administrator appointed in another State, and the sum paid was inventoried and accounted for by him in that State, the payment was good as against an administrator afterwards appointed in the State in which the pay was made, although this was then found to be the domicile of the deceased.

There is no danger, in the light of this ruling, that the United States could ever be called on again for money voluntarily paid to a local administrator here and fully administered, where at the time there was no foreign administrator to claim, as in the cases before referred to. The payment would be considered a discharge and if so, the local administrator must be held to have rightfully received it and the money to be assets in his hands. It does not therefore seem to me that the general views I have expressed, threaten the integrity of the administration heretofore granted by the Orphans' Court, and the qualification of the general doctrine is to be noted.

I have spoken, so far, of a mere general indebtedness, the payment of which has been authorized by an appropriation, at the time of the creditors' death. This, we have seen, has no local situs. But it is very easy for such a situs to be given it by arrangement with the creditor in his lifetime. If, for example, the Treasurer of the United States, when authorized by the Secretary's warrant, to pay the debt, should give his draft upon an assistant Treasurer in New York and the latter should accept it, it is evident that a change would take place in the character of the debt. In place of an open account, commercial paper—a bill of exchange—has been substituted. Assuming it to be the bill of the Government, it is governed by the same rules as that of an individual. *United States v. Bank of Metropolis*, 15 Pet. The bill has become payable at a place certain, and the debtor is there. That is the place of the contract and the bill would be assets there. And the same would seem to be the rule when the Treasurer gives a draft on himself. It may



be said that this is a bill of exchange, accepted as soon as drawn, to be paid at his counter here, just as a bill drawn by a partner on his firm is accepted in the very act of drawing it. More properly, perhaps, it is the promissory note of the Treasurer payable here. Byles on Bills, p. 66.

The original indebtedness at large of the United States, to the Pulliams, has now been paid off—conditionally—by the drafts described in the proceedings. These are a written contract of the Treasurer, whose official residence is at the seat of Government, to pay so much money *at this place*, and this has been accepted in place of a general indebtedness payable anywhere. The United States is under no obligation to pay these drafts anywhere else than here; no officer of the United States is authorized to do so and the creditor has no right to demand their payment elsewhere. In virtue of this transaction, the cause of action is here only, and the debtor is here. It is difficult to conceive how a debt can be more effectually localised.

The drafts have an intrinsic value as muniments of title to the money they represent. Without them the money cannot be drawn. The foreign or domiciliary administrator could not recover them from the attorney in whose possession they were. Only a local administrator could do that. Virtually, the attorney has done the only thing which he could be forced to do, viz.: he has delivered them to the local administrator who, in this case, happens to be himself. This administrator is the only person who can present them for payment. As the Supreme Court say, in *Wilkins v. Ellett* supra, "The administrator by virtue of his appointment and authority as such, obtains the title in promissory notes or other written evidences of debt, held by the intestate at the time of his death and coming to the possession of his administrator, and may sell, transfer and indorse the same," &c., &c. We do not see why his indorsement and delivery of them to the Treasurer would not be a perfect protection to him.

The case then stands as if an administrator appointed here were suing a resident debtor on his promissory note payable here, and the latter were making the defense that there is an administrator at the domicile of the deceased, which would obviously be no bar to the action.

The official character of the respondent, however, makes it necessary to resort to the writ of mandamus. There are no controverted questions of fact calling for the

exercise of judgment and discretion on the part of the Treasurer, but the single issue of law whether the petitioner is the person legally entitled to the money which it is the plain ministerial duty of the Treasurer to pay.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA.

#### GENERAL TERM.

JUNE 11, 1883.

*The U. S., ex rel. James H. Elgen, v. W. W. Upton*, Second Comptroller of the Treasury. Defendant ordered to show cause why writ of mandamus should not issue as prayed.

*Phoenix Mut. Life Ins. Co. v. Albert Grant et al.* Motions to print and for a continuance denied.

*Ex parte The Capitol, North O Street & S. W. R. R. Co.* Decree rendered June 5, 1883, revoked and set aside, and another of this date rendered in its stead.

JUNE 12, 1883.

*John B. Hammond v. James E. Miller.* Judgment of Special Term reversed.

*Elihu E. Jackson et al. v. James E. Miller.* Same.

*Phoenix Mut. Life Ins. Co. v. Albert Grant et al.* Defendants' exceptions to report overruled and auditor's report ratified.

*Rich & Bro. v. Chandler.* Cause restored to the calendar.

Wm. H. DeLacey was admitted to practice.

*Van Rensselaer Morgan v. Mattie H. Morgan.* Appeal dismissed for want of prosecution.

*Louisa E. Sturges v. Lavinia H. Holladay et al.* Decree of Special Term modified.

JUNE 14, 1883.

*Benjamin U. Keyser v. Jane C. Hitz.* Argument concluded and submitted.

JUNE 15, 1883.

*Hilton v. Devlin et al., and Gilmore v. Devlin et al.* Consolidated. Motion for an order allowing bill of review to stand. Consented to.

*U. S., ex rel. Wm. T. Jenkins, v. Charles P. Folger*, Secretary of the Treasury. Dismissed.

John Wallace and Blair Lee were admitted to practice.

*James M. Rogers v. Wm. McE. Dye.* Argued and submitted.

JUNE 16, 1883.

*Phoenix Mut. Life Ins. Co. v. Albert Grant et al.* Exceptions overruled; report of auditor ratified; decree pro confesso of November 11, 1875, made absolute; cross-bill dismissed, &c.

JUNE 18, 1883.

Samuel P. Heinline appointed constable.

*James M. Rogers v. Wm. McE. Dye.* Opinion by Mr. Justice James dismissing the bill.

*Rich & Bro. v. A. K. Chandler.* Order of Special Term reversed and motion to quash execution sustained.

*Emma S. Burdette v. Oliver P. Burdette.* Examiner ordered not to take the testimony of complainant.

Emma M. Gillett appointed Examiner in Chancery and U. S. Commissioner.

*Sigismund Harris et al. v. Adolph Damman, &c.* Judgment of Special Term affirmed.

**EQUITY COURT.—Justice James.**

MAY 26, 1883.

Kerby v. Stafford. Leave to file amended bill.  
 Smith v. Burch. Same.  
 Payne v. Payne. Referred to auditor.  
 Underwood v. Pratt. Same.  
 Caldwell v. Huss. Restraining order granted.  
 Nallor v. Nallor. Time to take testimony limited.  
 O'Donoghue v. Dole. Motion to consolidate overruled.

Sisson v. Sisson. Divorce a vin. mat. granted.  
 MAY 28, 1883.

Jones v. Stewart. Restraining order discharged and receiver appointed.

Young v. Young. Appearance of absent defendant ordered.

Quill v. Looney. Payment ordered to be made.  
 Ramsey v. Leib. Referred to auditor.

MAY 29, 1883.

Bart v. Jueneman. Restraining order granted.  
 Lightfoot v. Britt. Conveyance ordered.

Blake v. Fant. Commission to get answer of infant ordered.

Wininger v. Dougherty. Sale ordered and trustee appointed to sell.

Holmead v. Eslin. Sale ratified nisi.

In re John E. Willett, lunatic. Sale ratified and distribution ordered.

MAY 31, 1883.

Leddy v. Leddy. Leave to file petitions of creditors granted.

Kooms v. Budd. Cancellation of deed and resale ordered.

French v. Dorsey. Leave to file amended bill granted.

Sherwood v. Haley. Error corrected in record and sale ordered.

JUNE 1, 1883.

Dodge v. Davis. Sale finally ratified.

Stroud v. Stroud. Divorce a vin. mat. granted.

Hilton v. Devlin. Appearance of absent defendant ordered.

JUNE 2, 1883.

Davis v. Thomas. Pro confesso against certain defendants.

Collins v. Johnson. Leave to file amended and supplemental bill.

Knight v. B. & P. R. R. Co. Modification of decree ordered.

JUNE 4, 1883.

Brown v. Shepherd. Time to take testimony limited.

JUNE 5, 1883.

Rogers v. Dye. Rule on defendant granted.  
 Hume v. Brown. Time to take testimony limited.

Blake v. Fant. Guardian ad litem appointed.  
 Fitzgerald v. Fitzgerald. Divorce a vin. mat. granted.

JUNE 6, 1883.

Proctor v. Proctor. Appearance of absent defendant ordered.

Knesolung v. Johnson. Fred. B. Lilly allowed to intervene.

Miller v. Werle. Guardian ad litem appointed.  
 Bennett v. Egan. Substitution of trustee ordered.

Bury v. Bury. Testimony before examiner ordered taken.

Hoover v. Marr. Same.

Lord v. O'Donoghue. Sale ratified finally and referred to auditor.

Payne v. Payne. Sale and auditor's report ratified.

Noyes v. Gray. Trustee and clerk ordered to pay.

Wash. & Mex. Min. Co. v. Carrington. Time to take testimony extended.

Craig v. Craig. Sale finally ratified.

Young v. Young. Same.

Fry v. Fry. Testimony before examiner ordered.

Chapman v. Chapman. Same.

Seltzy v. Seltzy. Same.

Temple v. Worthington. Sale ratified nisi.

Brown v. Brown. Guardian ad litem appointed.

Draper v. Hyde. Auditor's report ratified.  
 Davidson v. Prall. Pro confesso against certain defendants.

**CIRCUIT COURT.—Justice Mac Arthur.**

JUNE 2, 1883.

Alexander v. District of Columbia.

Fearson v. Low. Motion to set aside overruled.  
 Marmon Bros. v. Walsh. Leave to withdraw check.

Swain v. Murdock. Judgment by default.

Abner v. Saunders. Motion for judgment of condemnation granted.

Roseham et al. v. Stelzle. Motion to quash attachment overruled.

Hownsly v. Stelzle. Same.

Mueldehausen v. Stelzle. Same.

Stone v. Birch. Same.

U. S. v. Howgate. Attachment quashed as to lot 199, square 206.

Hine v. Magarity. Security for costs.

Shipman v. Magarity. Same.

Snyder Bros. v. Kappel. Motion to set aside judgment overruled.

JUNE 4, 1883.

Wivam v. Goodall. Judgment below affirmed.  
 Nereskelmer & Co. v. Adams Express Co. Leave to plead extended.

**CRIMINAL COURT.—Justice Wylie.**

JUNE 11, 1883.

U. S. v. Dorsey et al.

Prayers on the part of the Government and the defense were presented. The counsel for the Government commenced their prayers for and were followed by the defense in answer. The prayers offered by the defense were submitted without argument. The court decided that as the defense declined to argue their prayers the Government had nothing to answer.

JUNE 12, 1883.

The judge's charged jury. On conclusion, the jury received the instructions of the court, and after some objections were noted on the part of the defense, went to their room to deliberate.

JUNE 14, 1883.

The jury brought in a verdict of not guilty.

JUNE 16, 1883.

U. S. v. Dorsey et al.

M. C. Rerdell, one of the defendants through his counsel requested to be allowed to withdraw his plea of guilty and substitute for it the plea of not guilty. In the absence of the defendant the court postponed action until the following Monday.

JUNE 18, 1883.

U. S. v. M. C. Rerdell; indicted for conspiracy, non pros.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JUNE 16, 1883.  
24549. Robt. D. Ruffin v. Francis Shanabrook. Certiorari.  
Defts atty, F. T. Browning.

JUNE 16, 1883.  
24550. D. A. Sahlein & Co. v. Louis Kaufman. Account,  
\$481.90. Pliffs attys, Carnal & Miller.

JUNE 19, 1883.  
24551. Henry Ruppert v. August Giesecke. Account,  
\$360. Pliffs attys, Miller & Forrest.

24552. The District of Columbia, to the use of John  
Young v. James A. Tait et al. Bond, \$2,000. Pliffs attys,  
J. A. Johnson.

24553. B. K. Plaia & Co. v. M. S. Nichols & Co. Account,  
\$1,200. Pliffs atty, E. A. Newman.

JUNE 20, 1883.  
24554. James Conlon et al. v. The District of Columbia.  
Damages, \$5,000. Pliffs atty, F. T. Browning.

24555. George P. Zurhorst v. John O'Neill. Judgment of  
Justice Tait, \$72.50.

JUNE 21, 1883.  
24556. Alexander C. Klink v. The District of Columbia.  
Damages, \$15,000. Pliffs atty, A. K. Brown.

24557. Samuel E. Thomason v. Thomas B. Harrison  
Slender, \$10,000. Pliffs attys, Hanley and Mills.

JUNE 21, 1883.  
24558. G. W. At Lee v. The W. & S. E. R. Co. Trespass,  
\$5,000. Pliffs atty, E. C. Weaver.

24559. Jonathan Magarity v. Johnan Klock. Note, \$150.  
Pliffs attys, Carrington & Latimer.

24560. Carl Mueller v. Sol. J. Fague. Note, \$279.66. Pliffs  
atty, J. H. Saville.

### IN EQUITY.—New Suits.

JUNE 18, 1883.  
5409. John S. Cowlee, alleged lunatic, upon petition of  
Israel L. Townsend. Injunction, alleged lunacy. Com.  
sol., Crittenden & Mackey.

5610. John Nanan et al. v. Bait. & P. R. R. Co. et al. For  
Injunction. Com. sol., John E. McNally.

JUNE 20, 1883.  
5611. Katharine Voegelé v. Aloys Voegelé. For divorce.  
Com. sol., A. C. Richards & O. S. B. Wall.

5612. Emma C. D. Nickerson v. Azor H. Nickerson. For  
divorce. Com. sol., N. Wilson.

5613. Same v. Same et al. For receiver and injunction.  
Com. sol., same.

JUNE 21, 1883.  
5614. Mollie B. Reiter v. John H. Reiter. For divorce.  
Com. sol., A. B. Williams.

### PROBATE COURT.—Justice James.

JUNE 2, 1883.  
Estate of Amanda F. Beveridge; inventory returned by  
administrator.

Estate of John S. Hopkins; administrator bonded and  
qualified.

James Campbell, guardian; bonded.

Estate of Geo. Washington; administrator ordered to  
sell.

Estate of Thos. L. Dilley; bond signed by administrator  
and one surety.

Estate of Andrew Rothwell; surety signed bond of ex-  
ecutor.

In re will of Elizabeth Miller; renunciation of executor.  
JUNE 4, 1883.

Estate of Noble Young; commission issued to take testi-  
mony of witness to will.

Estate of Benjamin T. Gridley; petition for adminis-  
trator and assent of next of kin.

Estate of Joseph H. Shiver; receipt of sole distributee  
filed.

Estate of John P. Sherburne; letter acknowledging  
drafts.

Estate of Clark Mills; order postponing sale.

Estate of John J. F. Joachim; proceedings revived and  
executor directed to distribute.

Estate of James A. Barr; notice issued to executor for  
settlement.

Estate of Andrew Rothwell; letters testamentary issued,  
ac.

Estate of Oscar H. Lackey; executrix bonded and qual-  
ified.

Estate of Timothy Sullivan; bond signed by one surety.  
JUNE 5, 1883.

Estate of Catharine Brown; executors bond completed.

Estate of Amanda F. Beveridge; sale of personally  
ordered.

Will of Belenda Kondrup; filed for probate.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters of Administration on the personal estate of Michael  
H. Homiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 19th day of  
June next; they may otherwise by law be excluded from  
all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

MARY JANE HOMILLER, Administratrix.  
HINE & THOMAS, Solicitors. 25-3

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters of Administration on the personal estate of William  
Barnes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 16th day of June  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 16th day of June, 1883.

SARAH A. L. BARNES, Administratrix.  
DANIEL O'C. O'CALLAGHAN, Solicitor. 25-3

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of John W.  
Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 16th day of June  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 16th day of June, 1883.

LUCINDA H. SCOTT, Executrix.  
EDMUND A. BAILEY, Solicitor. 25-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath ob-  
tained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of Anthony  
M. Dutch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 1st day of June  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY A. DUTCH, Executrix.  
H. T. WISWALL, Solicitor. 25-3

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of James  
Sayers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 19th day of June  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 19th day of June, 1883.

MARGARET SAYERS, Executrix. 25-3

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court busi-  
ness, Letters Testamentary on the personal estate of  
Edward Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 8th day of June  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ELLIDA J. MIDDLETON, Executrix.  
H. T. TAGGART, Solicitor. 25-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah W. Parris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

SAMUEL B. PARRIS, Executor.  
CHAS. S. WHITMAN, Solicitor. 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of June, 1883.**

JULIA B. BOMAR } No. 8,588. Eq. Doc. 28.  
v.  
ROBERT H. BOMAR.

On motion of the plaintiff, by Mr. Carpenter, her solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 26-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Alcorn, late of Howard Co., Maryland, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

WILLIAM E. LINN, Administrator.  
WILLIAM E. LINN, Attorney at law,  
1838 High street,  
Georgetown, D. C. 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity.**

THEODORE B. CROWE } No. 8606. Eq. Doc. 18.  
v.  
JOSEPH W. BOUCHER ET AL.

On reading report of sale of real estate of the late Alfred H. Boucher, this day filed by Messrs. R. P. Jackson and William A. Meloy, trustees:

It is ordered, this 15th day of June, A. D. 1883, that said sale be ratified and confirmed unless cause to the contrary be shown to this court on or before the 16th day of July, next. Provided, a copy of this order be published for three weeks prior thereto in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 26-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hayward M. Hutchinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1883.

ELIZA C. HUTCHINSON, Executrix.  
WM. B. WEBB, Solicitor. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883,  
26-3 SAM'L E. BOND, Administrator.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity.**

JAMES L. BARBOUR, Adm'r, } No. 7,619. In Equity.  
v.  
OWEN LEDDY.

Consolidated with

CATHARINE LEDDY } No. 7,961. In Equity.  
v.  
MICHAEL LEDDY ET AL.

On consideration of the trustees' report of sales made of the real estate of Owen Leddy, Jr., deceased, it is this 15th day of June, A. D. 1883, ordered, adjudged and decreed, that the sales be and the same are hereby ratified unless cause to the contrary thereof be shown on or before the 18th day of July, A. D. 1883. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the City of Washington, D. C., once a week for three successive weeks before the said 18th day of July.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 26-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 23, 1883.**

In the matter of the Will of Cornelius Cohan, alias Cornelius Crowley, late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Kearns.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of July next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
R. E. CRAWFORD, Solicitor. 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

BENJAMIN L. JACKSON ET AL. } No. 5,960. Equity.  
v.  
ELI S. BLACKWOOD ET AL.

Mahlon Ashford and Job Barnard, trustees herein, having reported a sale of lot 49, of Augustus Davis' subdivision of original lot numbered 8, in square numbered 613, in Washington City, in the District of Columbia, to Samuel T. Williams, for \$6,060:

It is, this 22d day of June, 1883, Ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 22d day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: R. J. MEIGS, Clerk.  
EDWARDS & BARNARD, Solicitors. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1883.

24-3 JOHN W. HUNTER, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Joseph F. Hodgson, Administrator of John B. Castell, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of July A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Essex, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ANDREW J. BIEDLER, Executor.

EDWARDS & BARNARD, Solicitors. 24-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Andrew Bothwell, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

GEORGE L. SHERIFF,  
ALMARIN C. RICHARDS,  
Executors.

24-4

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louise Wagner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

HENRY WAGNER, Executor.

CHAS. A. WALTER, Solicitor. 24-5

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 12, 1883.**

In the matter of the Will of Michael Reuter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles Walter.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of June, 1883.**

SONS OF TEMPERANCE NATIONAL  
MUTUAL RELIEF SOCIETY

No. 5587. Eq. Doc. 23.

ANASTASIA HIGGINS ET AL.

On motion of the plaintiff, by Mr. S. M. Yeatman, its solicitor, it is ordered that the defendants, Anastasia Higgins and Eli Higgins, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 24-5 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

EMMA J. WININGDER, Guardian

No. 5587. Eq. Doc., 23

WILLIAM B. DOUGHERTY.

Upon hearing the report of Thomas W. Fowler, trustee, showing the sale of lot seventy-five (75), in square 180, at the price of thirty-two cents per square foot, it is, this 16th day of June, 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of July, 1883. Provided, that a copy of this order be published in the Law Reporter once a week for three weeks before said day.

By the Court. CHAS. P. JAMES, Justice.

True copy. 24-3 Test: R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, sitting in Equity, the 14th day of June, 1883.**

THE NATIONAL SAVINGS' BANK,  
of the District of Columbia. No. 5186. Eq. Doc. 22.

v.  
SAMUEL ADAMS ET AL.

The report of Benjamin P. Snyder, trustee in the above entitled cause, filed this day therein, shows that he has sold the premises described with bill to Henry T. Greer, for the sum of \$5,700 cash, at public auction. Upon consideration of the said report, it is, this 14th day of June, A. D. 1883, ordered, that the said sale be and the same is in all respects, including the modification of the terms of sale to a cash payment in full, hereby ratified and confirmed unless cause be shown to the contrary within thirty days from the date hereof. Provided, nevertheless, that a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before the expiration of said period of thirty days.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 24-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Samuel C. Eaub, Executor, of George N. Hopkins, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of July, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

WM. T. JOHNSON, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the matter of the Estate of William Lilley, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Frederick B. Lilley.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

CRITTENDEN & MACKEY, Solicitors. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. May 25, 1883.**

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Bergman and Laura Magee.

All persons interested are hereby notified to appear in this court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: 23-5 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benjamin F. Gridley, late of Providence, Rhode Island, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of June, 1883.

23-5 JAMES H. GRIDLEY, Administrator.

*Legal Notices.***CLERK'S OFFICE OF THE SUPREME COURT OF the District of Columbia. May 31, 1883.**

I certify that Dorsey E. W. Carter, has filed in the Supreme Court of the District of Columbia, a petition praying that he may have his name of Dorsey E. W. Carter, changed to Dorsey E. W. Towson, alleging as his reasons for filing the same that Dorsey E. W. Towson, is his real and proper name, which was changed during his minority, and he desires to resume the name of his ancestors.

Witness my hand and the seal of said court this 31st day of May, 1883.

23 3

R. J. MEIGS, Clerk,  
By M. A. OLANCY, Assistant Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Abby L. Bodfish, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1883.

F. D. SEWALL, Administrator.

J. W. & GEO. L. DOUGLASS, Solicitors.

23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 4, 1883.**

In the case of William H. Young, Executor of James A. Barr, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.

SAML. O. MILLS, Solicitor.

23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Washington, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1883.

CHARLES E. KENGLA, Administrator.

CARUSI & MILLER, Solicitors.

23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John S. Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

BERTHA HOPKINS, Administratrix.

HINE & THOMAS, Solicitors.

23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Dilley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

23.3

G. W. OLARK, Administrator.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah Berry, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1883.

23-3

CHAS. H. ORAGIN, Jr., Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Johnson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1883.

NOBLE JOHNSON, Executor.

GEO. F. GRAHAM, Solicitor.

23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Timothy Sullivan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

23-3

RICHARD E. ORAWFORD, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis A. Ashford, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

ISABELLA W. ASHFORD, Executrix.

GEO. F. AFFLEBY, Solicitor.

23.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of George W. Collins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1883.

ALICE COLLINS, Executrix.

W. B. WEBB, Solicitor.

23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 6, 1883.**

In the case of Julia T. Scott, Executrix of Gustavus H. Scott, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 29th day of June A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.

JAMES G. PAYNE, Solicitor.

23-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. June 13, 1883.**

**EDWARD TEMPLE ET AL. } No. 7767. Eq. Doc. 21.**  
**CHARLES WORTHINGTON ET AL. }**  
 Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sale of the following real estate, to wit: lot numbered five [5], in square numbered six hundred and forty [640], to Charles H. Parker, for \$197.10; lot numbered eight [8], in square numbered six hundred and forty two [642], for \$180, to Charles H. Parker; all of square numbered six hundred and forty-five [645], to J. Harrison Johnson. O. T. Thompson and Edward D. Wright, for \$4,731.46; lot numbered two [2], in square numbered one thousand and eleven [1,011], to Doretta F. Talcott, for \$456.50; lot numbered eight [8], in square numbered one thousand and seventy [1,070], to Aug. Burgdorf, for \$133.48; lots numbered nine [9], ten [10], eleven [11], twelve [12], thirteen [13] and fourteen [14], in square numbered one hundred and twenty-eight [128], to Aug. Burgdorf, for \$2,000; south one-half [½], of lot numbered ten [10], in square numbered twenty-eight [28], to Aug. Burgdorf, for \$250; lots numbered two and three [2 and 3], in square numbered twenty [20], for \$115; lot numbered nineteen [19], in square numbered six hundred and eight [608], for \$50, to Aug. Burgdorf; lots numbered two [2] and fourteen [14], in square numbered one thousand and ninety-five [1,095], and lots numbered five [5] and six [6], in square numbered one thousand and ninety-six [1,096], and the south forty [40] feet front of lot numbered one [1], and all of lot numbered seventeen [17], in square numbered one thousand and ninety-seven [1,097], to Aug. Burgdorf, for \$468.39; it is, this 13th day of June, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary thereof be shown on or before the 13th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 13th day of July, A. D. 1883.  
 By the Court. **CHARLES P. JAMES, Justice.**  
 A true copy. Test: 24-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, June 7th, 1883.**

**FRANCIS D. SHOEMAKER ET AL. } No. 8,531. Eq. Doc. 23.**  
**EDWARD SHOEMAKER ET AL. }**  
 It is by the court, this 7th day of June, 1883, ordered that the offer to purchase the real estate in said cause mentioned made by William M. Galt, and reported by Charles H. Cragin, Jr., and William A. Gordon, trustees, be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 8th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 8th day of July, 1883. The report states the amount offered to be \$10,600.  
 By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. June 6, 1883.**

**CHARLES W. PROCTOR } No. 8,593. Equity Docket 23.**  
**MARY R. PROCTOR. }**  
 Notice of the pendency of the petition for divorce in the above entitled cause is hereby given to the defendant; and it is ordered that the defendant cause her appearance to be entered herein on or before the commencement of the term occurring forty days after this day, otherwise the court will proceed to hear and determine said cause.  
 By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Emily Johnson, formerly of Frederick, Md., late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by John H. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
**H. J. RAMSDELL, Register of Wills.**  
**WORTHINGTON & HEALD, Solicitors.** 23-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. June 16, 1883.**

In the matter of the estate of John W. Starr, late of the said District of Columbia, deceased.  
 Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah M. Starr.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of July, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
 Test: 24-3 **H. J. RAMSDELL, Register of Wills.**

**The S. Lu Mining Co. of W. Va., will hold their first meeting at the residence of the President of the Co., June 23d at 7:30 p. m.**  
**A. P. STEWARD, Secretary.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Sarah H. B. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
 Test: 23-3 **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Fisher A. Foster, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day June, 1883.

**WILLIAM B. SNELL, Executor.**

**B. F. LIGHTON, Solicitor.** 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of Freehold, New Jersey, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Howell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber or his solicitor, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

**WILLIAM S. THROCKMORTON, Administrator.**  
**O. D. FOWLER, Solicitor, 505 D street, n. w.** 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Oscar H. Lackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

**OLARA O. LACKEY, Executrix,**  
**JAS. H. SAVILLE, Solicitor.** 23-3



# Washington Law Reporter

WASHINGTON - - - - - June 29, 1883.

GEORGE B. CORKHILL - - - EDITOR

## United States Chief Justices.

There has just been published a table of cases argued and adjudged in the United States Supreme Court from its foundation until last year. The compilation also gives some interesting facts in connection with our judicial history.

During the first decade of our history the court saw three Chief Justices. The three Chief Justices next in order among them served for seventy-two years. John Marshall sat for thirty-four years, and Roger B. Taney for twenty-eight years. Eight Justices had left the bench when the century began. Bushrod Washington, of Virginia, William Johnson, of South Carolina, John McLean, of Ohio, James M. Wayne, of Georgia, each served thirty years; Samuel Nelson, of New York, and John Catron, of Tennessee, twenty-seven; Robert C. Grier, of Pennsylvania, and Gabriel Duval, of Maryland, twenty-five; Nathan Clifford, of Maine, twenty-three; Smith Thompson, of New York, and Peter V. Daniel, of Virginia, twenty years; Joseph Story was the veteran of the bench. His term exceeded by one year that of Chief Justice Marshall. Edwin M. Stanton was confirmed as a Justice while on his death-bed. Chief Justice Waite and Justices Field and Bradley are the seniors of the present bench, having all been born during the last administration of Madison. All their associates have been borne since the last administration of Monroe. Only one Supreme Bench Judge was nominated under each of the Presidents: Monroe, John Quincy Adams, Tyler, Fillmore, Pierce, and Buchanan. Washington appointed nine, Jackson and Van Buren seven, and Grant eight. Neither Harrison, Taylor, nor Johnson made any appointment.—*American Law Magazine.*

THE recent law passed by Congress repealing the stamp tax on bank checks, drafts, orders and vouchers, and the tax on matches, perfumery and medicinal preparations, goes into effect under the statute on July 1.

# Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

EMMA S. BURDETTE

vs.

OLIVER P. BURDETTE.

{ Decided June 14, 1883.

{ Justices HAGNER, COX and JAMES sitting.

EQUITY. No. 8,189.

1. Sections 876 and 877 of the Revised Statutes of the District of Columbia, regulating the competency of parties to actions, suits, &c., as witnesses, does not apply to suits for divorce *a vinculo*.
2. But in a suit for a divorce from bed and board, on the ground of cruelty, the petitioner may, under the 98th Equity rule of this court, be examined as a witness as to any cruel or inhuman treatment, alleged in the petition to have taken place where no witness was present competent to testify. In all other cases the parties are incompetent.

THE CASE is stated in the opinion.

COOK & COLE for complainant.

J. J. DARLINGTON for defendant.

Mr. Justice JAMES delivered the opinion of the court.

This is a suit for divorce *a vinculo*. In taking the testimony before an examiner, the petitioner was offered as a witness in her own behalf, and upon objection by counsel for the defendant, the question of her competency was certified by the examiner to the Special Term in Equity. By that court it has been certified to be heard here in the first instance.

It seems to have been very commonly supposed by the bar that section 876 of the Revised Statutes for this District authorizes the examination of parties to suits for divorce in all cases except where adultery is charged as the ground of the application; and this error has led to fruitless suits and to unnecessary costs.

The competency of parties to testify is regulated by sections 876 and 877 of the Revised Statutes, which are drawn from section 1 of the act of July 2, 1864, 13 Stats. at Large, 379. Section 876 provides that, "On the trial of any issue joined, or of any matter or question, or any inquiry arising in any suit, action, or other proceeding in any court of justice in the District, . . . the parties thereto, and the persons in whose behalf any such action or proceeding may be brought or defended, and all persons interested in the same, shall, except as provided in the following section, be competent and compellable to



give evidence, either *viva voce* or by deposition, according to the practice of the court, on behalf of any of the parties to the action or other proceeding.

Section 877 provides that, "Nothing in the preceding section shall render any person who is charged with an offense in any criminal proceeding competent or compellable to give evidence for or against himself; or render any person compellable to answer any question tending to criminate himself; or render a husband competent or compellable to give evidence for or against his wife, or a wife competent or compellable to give evidence for or against her husband, in any criminal proceeding or in any proceeding instituted in consequence of adultery.

"Nor shall a husband be compellable to disclose any communication made to him by his wife during marriage; nor shall a wife be compellable to disclose any communication made to her by her husband during marriage."

Undoubtedly, if taken literally, the language of section 876 would include suits for divorce *a vinculo*; but we think that it is not to be so taken, and that several provisions of the next section indicate the paramount reasons of public policy which forbid us to apply at all to parties to divorce suits, the general provision which allows parties to suits to testify as witnesses.

It is to be remembered that, although marriage originates in the consent of parties, that relation, once established, has always been treated by the common law and by the laws of all nations as an institution of society, in which society had an interest which was, if possible, paramount to that of the parties themselves; and that, long before the act of 1864, it was settled to be a matter of public policy, recognized by legislative and judicial authority, that the parties themselves should have no power to dissolve or impair its obligations by their own act. This policy is not only recognized but declared in the most impressive manner by several of the provisions of section 877. It might seem that nothing could be more important to society than the conviction and punishment of criminals who violate its peace; yet the legislature has declared, by the provisions of this section, that the preservation of its fundamental institution of marriage is even more important to society than the punishment of its criminals, and that husband and wife shall not be arrayed against each other as witnesses, even for the purpose of public justice. Crime shall not be proven by such testimony, even if it must thereby go unpunished. When the preservation of the family is thus placed by this very statute

above the protection of the public peace against crime, can it be for a moment supposed that the same statute intends that the very institution which is thus treated as of paramount importance shall itself be the occasion of arraying husband and wife against each other as witnesses? We should only weaken this argument by dwelling upon it. It is clear to us that the very act which renders parties to suits competent and compellable as witnesses indicates that the rule is not to be applicable to parties to suits for divorce.

It may be added that the incompetency of such parties to testify results from another statute, which was re-enacted as a part of the revision at the same time with section 876. Section 787, which is drawn from section one of the act of June 19, 1860, 12 Stats. at Large, 59, provides that no judgment for a divorce shall be rendered on default without proof; nor shall any admissions contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall in all cases be proved by other evidence." Of course the act of 1864 was not intended to impair the effect of this provision, and any such result has been prevented by the re-enactment of both as parts of one body of law. But the application of section 876 to parties to divorce suits would very seriously impair the effect and purpose of section 787. If it were so applied, the defendant might admit in a deposition the facts charged. It would be to no purpose that admissions in a sworn answer, which are in fact in the nature of testimony, should go for nothing, if the respondent might, as a witness, state the same facts on the stand. Upon these grounds, we are of opinion that section 876 has no application to parties to suits for divorce. It was intended only to remove that disability which arose from the single fact of being a party, and does not affect disqualifications which rest upon other grounds. For example, a party who is infamous is not thereby made competent because the disability of parties is removed.

We have explained the grounds of our conclusion as fully as if this were a new question, since the reports of this court contain no decision on this point. It should be observed, however, that the same rule has been more than once announced by the General Term; the last time in *Russell v. Russell*.

There is one matter, however, in one class of suits for divorce, concerning which the petitioner may, under a rule of this court, be examined. Equity Rule 98, provides that, "On reference to take proof of the facts charged

in a petition for a divorce from bed and board, the examination of the petitioner, on oath or affirmation, may be taken as to any cruel or inhuman treatment alleged in the petition to have taken place when no witness was present competent to testify. In all other cases the parties are incompetent.

The examiner is instructed not to take the testimony of the petitioner in this cause.

*Special Term for Criminal Cases, April 27, 1883.*

THE UNITED STATES vs. JOSHUA ANDERSON.

CRIMINAL DOCKET No. 14,192.

The defendant was indicted and tried for the murder of James Carr. At the close of the evidence and arguments of counsel, Mr. Justice MAC ARTHUR delivered the following charge to the jury:

**GENTLEMEN OF THE JURY:**

As you have already learned from the reading of the indictment, the defendant is accused by it of a homicide committed on the person of James Carr, in the District of Columbia, at a locality which has been described by the witnesses, on the 31st day of December, 1881. From the peculiar nature of the defence, it becomes important that the different grades of homicide should be understood by the jury.

In this District there are three of those grades, existing, however, without, I believe, any statute on the subject; one being murder, another being manslaughter, and the third being homicide excusable on the ground of self-defence. The prosecution contends that the testimony in the case brings the charge under the first of these grades, to wit, murder. The defence contends, on the other hand, that the homicide was excusable on the ground of self-defence. They, however, submit to the court whether the jury should not be instructed that if the offence does not fall under either of these divisions, there should still be found the crime of manslaughter. It will, therefore, be necessary to define to you the ingredients of these divisions of this offence.

Murder consists in the taking of the life of another person without authority and without excuse, and with the intention of taking life. In other words, it is the taking of the life of a human creature in the peace of the commonwealth, with malice aforethought, and without the necessity of excusable self-defence.

Manslaughter occurs where this intention to take life does not exist, but where, upon a sudden combat or altercation between the two parties, the passion having been excited, the person is supposed to be deprived of the power of design, and under the heat of this passion

takes the life, without any premeditated intention, to take the life of his adversary. That is, life is taken in the heat of passion and without the design or malice which constitutes murder.

The third is where a party has no other means of preserving his own life or of preserving himself from great bodily harm against an assailant under circumstances that excuse him. These are the three grades of homicide which exist in this District.

You have heard the counsel refer to murder as embodying the ingredient of malice; and the books all require that malice shall accompany the act in order to constitute that crime. This malice, however, is the intention with which the act is committed. It may be committed without what we ordinarily understand to be personal hatred or malevolence, as where a party takes the life of another not because he hates him, but because he wants to rob him. It is the intention to take life, the intention to do an unlawful act that constitutes malice. This intention may be implied in a variety of ways. One party attacks another with a dangerous and deadly weapon and kills him without provocation. The law implies malice from that circumstance. It would be difficult to prove the intentions of individuals otherwise than by their acts, for no one could testify on that subject aside from the party implicated. We, therefore, have to determine the intentions and motives of men from their acts. The law implies from the use of a deadly weapon that the individual who uses it has in view the usual consequences and results of such an act, which is the taking of life.

It is claimed by this Government that the fact is established here of the intention to take life from the use of a deadly weapon. The circumstances of the homicide have been described to you by two witnesses—the man who was in charge of the bar, Mr. Dermott, and Pulaski, who appears to have been the companion of the deceased. Their statements of the facts substantially agree. It appears that Carr had visited that bar-room at an earlier part of the evening, and after an interval of some twenty minutes, returned to it with Pulaski; that he was standing at the end of the bar, leaning against the rail next to the cigar stand, when the defendant came from the narrow passage leading to the water-closet, and made the remark which has been testified to. At that time McDermott appears to have been on the outside of the bar, and when the defendant asked the question, without apparently asking it of any particular individual, “who said I had something in my pocket;” he was told by McDermott t t

nobody had spoken of it, and while he turned to enter the inside of the bar, the first shot was fired. That shot was not fired, however, until the declaration of Carr, addressing himself particularly to the defendant, that he could whip him, and he knew it. When McDermott got inside of his bar, the shooting continuing, he testified that Carr made a movement towards the centre of the room, and I should think, towards the spot where Anderson then stood or was walking, which he called a bound or rush, when Pulaski interposed, and Anderson fired another shot at that particular juncture, when the deceased recoiled and never made another motion or uttered another word. He was found, after the controversy had ceased, on the further side of the saloon between the stove and the entrance, having fallen down in some position that was described by the witnesses, not entirely lying down, nor entirely standing up, but in a position of prostration and helplessness.

The medical witness testified to the nature of the wounds which were received. He described one of them as being between the fifth and sixth ribs, two or three inches from the centre line of the body. That bullet, however, did not penetrate into the cavity, but rebounded and was lost. He describes another wound which was remarkable for its novelty and fatality, which entered below the second rib and about two or three inches from the centre line of the body, perforating the front wall, as he calls it, of the large blood vessel, the largest blood vessel in the body which carries the vitalized blood throughout the circulation, and that the bullet inevitably must have dropped into this vessel, and immediately the blood was thrown pell mell upon the heart, which paralyzed it causing, necessarily, instant death. That he traced the bullet down to the spine where it struck without going through the vessel itself, and then was lost in the cavities beneath. And he states what we can very readily believe, that the wound was necessarily mortal, and instantaneously so.

This is the homicide which the government has proved, and in regard to which there appears to be no controversy. McDermott states that the pistol seen on that occasion was in the hands of the defendant, and that the shots were fired by the defendant. Pulaski states that when he interposed between the men the defendant pushed him aside and fired at least once at the deceased.

Now I feel quite at liberty to say, under these circumstances, that there can be no doubt at all that the man was killed in conse-

quence of these shots and balls fired at him by the defendant. And this much is undoubtedly to be inferred from the defence that it was for the preservation of the defendant's life—a defence which implies that there had been a homicide, and that there was no other way of preserving the defendant's life than by taking that of Carr's.

These being the facts of the case, how stands it with the defence? Perhaps I had better, in the first place, dispose of the matter in regard to which the counsel requested the views of the court; that is in regard to manslaughter. The Government claims that the offence is murder or nothing; and while the defence admits that it may be manslaughter if not justifiable, they desire that I should present that view of the case to the jury. As I have already said, the distinction between manslaughter and murder consists in this, that in murder the intention is to take the life of the party, and in manslaughter there is no such intention, but it comes rather by accident so to speak. A book was read by Mr. Cook, before the closing argument commenced, and I have since looked at the case he referred to, which very well illustrates a case of manslaughter. It was where two parties got into an altercation, and they go to work at each other with instruments or anything they happen to have in their hands—it happened to be knives and axes in that case—and one of them killed the other, and it was left to the jury to say whether, homicide having taken place in consequence of this combat between the men, and while the blood was up, it was not manslaughter.

The court held in that case that it could not be murder; that it might be a case of manslaughter. But the jury finally came to the conclusion to acquit the defendant on the ground of justifiable homicide.

If you come to the conclusion that this is not murder, and that yet it is not justifiable—and I shall have, presently, occasion to explain what the latter form of homicide means; if you come to the conclusion that the defendant committed this act in consequence of a sudden and unexpected difficulty in the heat of passion, and without any design of taking life, then it would simply be manslaughter, which would subject the defendant to serious punishment but not to the loss of his life. Much of what I will have to say about justifiable defense will also apply to the case as one of manslaughter, which I shall now proceed to explain.

As has been explained to you by counsel, it is a duty which we owe to ourselves, and which the law recognizes as just and right to

preserve our own existence, even if we are obliged by our unfortunate position at the time to preserve that life at the expense of another. You will perceive that this is an extreme right, and it is only to be exercised—it is only to be justified—when a person's life is in absolute danger, or while he is "in danger of great bodily harm," is the language of the books. If, therefore, a person can preserve his own life without taking that of his adversary, he is bound so to do. It is not upon every pretext of a quarrel that a person can set up, after having taken the life of the man with whom he has quarrelled, a defense of excusable homicide. It is only when the circumstances of the case present actual danger to his own life, or that of great bodily harm, that he is justified in resorting to this extreme remedy. It is a right and a remedy which the law places in his hands, and it is to be exercised only when he himself is in danger.

Now, there are two or three things in this connection which it would be quite proper for me to say, and one is, that we, sitting here calmly and coolly, looking back at a transaction of this kind, may be able to see in a particular case that there was no justification and no excuse for taking the life complained of. It is the duty both of the court and of the jury, so far as the facts are concerned, to understand the precise position in which the accused party was at the time he took the life of his adversary. If the circumstances were those of actual danger to himself, then of course he is entitled to an acquittal. If, on the other hand, the circumstances appeared to him to be dangerous—reasonably so, and he thought so—he was at liberty to act upon this presumption of the law. But a man before he resorts to the use of a deadly weapon in such circumstances, when he knows that the probable consequences of its use will be death, is bound to entertain a firm, fixed and honest belief that his own is in danger. Men differ in fortitude and in prudence. Some men are much more easily excited than others under the same circumstances, and therefore you must consider what the average man would do. You might ask yourselves what would a man of ordinary prudence and fortitude in his position have to fear under the same circumstances? Not what you or I might fear; but what would a prudent man, in full possession of his senses at the time, exercising the prudence and carefulness of a man of that description, under the same circumstances, have to apprehend, what amount of danger, and if upon the whole it appears to the jury that death would seem to be impending in the

judgment of such a man, why then he is justified in acting upon these appearances and in protecting himself from what he honestly believed was the actual purpose of the assailant, that of taking his life with the means present of effecting that purpose.

Now, this man Carr does not appear in a very creditable way before this court and this jury. He appears to have been a rough, drinking man, and every time that the witnesses had occasion to mention his name he seemed always to have been under the influence of liquor, and on such occasions it is undeniable that he manifested much ill-will towards the defendant, stating months before this shooting occurred that he could whip him, and on one occasion saying that he could whip him and striking him, but parting immediately, the defendant going off with a bloody nose in one direction and Carr going in another. He also threatened the defendant's life on a variety of occasions to other individuals, saying to his cousin, down at Albert's brewery, that he would have his life before another year passed over his head; saying to Pulaski the evening on which the homicide occurred, that he would have his life before ten o'clock at night, and indulging in remarks of that description. But the witnesses all testify that he was always in liquor at the time to a greater or less extent, and we do not find on any occasion that he had with him any more deadly weapon than his arm, with which he threatened that he would take his heart out of him and carry it down to some locality, the name of which I do not remember now, as a Christmas gift. So that it does not appear anywhere that he had any other means of taking life at the time these threats were made than those which nature had furnished him—his hands, his arms, and those organs which that class of rough, brutal fellows usually mean when they say they can whip each other. Do they mean anything more than the one is the better man of the two, and not that they can kill each other with deadly weapons? Is it anything more than the brawling, boasting or braggadocio of a man in liquor without any settled purpose or intention?

It appears that these threats had been communicated, on one occasion at least, to the defendant. On another occasion they had been uttered in his presence—that he could whip him. On another occasion he said to a witness that he would be revenged on him; and on another when they came together Carr told Anderson that he would be even with him. I have admitted all this testimony to come before you, not really for the purpose of showing that the defendant here did not mean

to take the life of Carr when he fired rapidly at him with his pistol, but for the purpose of showing what the intention and motive of Carr was in making the exclamation which he did that evening in the bar-room in the presence and hearing of Anderson. If he had a murderous intention that evening, and intended really to carry out his threat, there can be no doubt at all, upon the testimony in the case, that the defendant ought to be acquitted on the ground of justifiable homicide; and if this man, although in liquor, went there for the purpose of picking up Anderson and killing him, why he must take the consequences of his own violence upon his head; his blood is upon his head, and the law steps in and protects this defendant from the consequences of his act.

I want to say a word about these bar-room brawls and murders, for a purpose perfectly consistent with the case itself. In the first place, I have derived undoubtedly the same impression from the testimony that the jury has, of Carr's general conduct and character—that he was a rude, drunken fellow, and that he probably cherished great hostility of feeling towards the defendant. This is no reason why he should be killed. The law extends equal protection to the good and to the bad. It is like the sun, which shines upon the field of the wicked man as well as upon the field of the righteous man, and it protects men's lives everywhere, from the humblest up to the mightiest; it shields those in the poorest and most demoralized condition as well as those occupying the highest social position that any of us attain. There is no discrimination in this respect. And, therefore, although this man was a man of this character, he was as much within the protection of the law as the most distinguished member of the community. People of this kind get together in bar-rooms, and hence we have frequent brawls and sometimes murders. It is no defense to a man who goes into a bar-room and kills a companion that he was drunk, or that they had a quarrel (usually about some entirely insignificant thing) and one or both were intoxicated. Men who visit such places have a perfect legal right to do so. Their is no offence in their conduct in that respect, and the law assumes no guardianship over them. But men of that character should be taught the lesson that they cannot give loose rein to their passions and expect to escape under some pretext of a sudden combat, or the necessity of preserving their own life as a reason for taking the life of another, unless the circumstances of the case clearly show that they were justified in doing it beyond a reasonable doubt.

This brings me to another branch of this case, and perhaps the last, and that is the presumption of innocence, and the matter of reasonable doubt. These two principles are so allied together that it is difficult to separate them and they are usually explained at the same time to the jury. You have been told repeatedly during this trial, and rightly so, that the burden of proof is upon the government to establish the guilt of the defendant; and it is quite true that the defendant is entitled to the presumption of innocence until that guilt is established by the testimony in the case. Now, this presumption of innocence is only a presumption: it is not a fixed and positive condition, it is simply a presumption which vanishes the moment it is dissolved by competent proof to the contrary. But it stays by the defendant like the right arm of his protection until his guilt is proved, because a party is never called upon to prove his innocence until the presumption of guilt arises from the circumstances of the case. This presumption must be removed by evidence of guilt beyond a reasonable doubt, and here comes in a matter which all judges have found a great deal of difficulty in explaining to juries—what a reasonable doubt is. It is that legal phraseology used to express a condition of mind produced by testimony that does not establish to a moral certainty the guilt of the defendant. You are aware, of course, that in these trials we have to rely upon moral testimony. What you see, what you perceive, you know without any doubt. Much of what you hear and what you handle, you know without any doubt. Whatever falls under your observation is matter of positive knowledge. You are selected as a jury in this case because you have no positive knowledge: you know nothing about the case except what is communicated to you by the sworn witnesses.

It is therefore impossible in a trial of this kind, that proof should ever become positive in the sense of which I have just spoken, for the jury, would then be the witnesses. This is called moral testimony, and it must be convincing to a moral certainty, because it will not do to make a mistake especially where a man's life is at stake. And therefore it is that when witnesses are sworn in a case, and they testify to a state of facts which are uncontradicted and consistent, it would be unreasonable not to believe them, and there is no room for a reasonable doubt in a case of that description; and when the testimony of the witnesses is of this character, the jury is not at liberty to depose of it by saying they have some doubt about the case. In other words, the doubt must not be a mere

fancy or a mere conjecture, it must be a doubt growing out of the facts and circumstances testified to by the witnesses—that they are not sufficient. If a witness comes before you and swears that he saw a defendant on trial point a pistol at another man, and that the man fell and was taken up dead, and another witness who was present testifies to the same thing, and so on, there is no room for reasonable doubt in such cases as that, and that is testimony which should convince the minds of the jury to a moral certainty. Therefore, gentlemen, this matter of reasonable doubt is one which must spring out of the case, and after reviewing all the testimony candidly and fairly as reasonable men, if it would leave no reasonable doubt in your mind of the guilt of the defendant, you should convict him according to the offence which he has committed; but if, on the other hand, it leaves a doubt of that description of his guilt or innocence, you should acquit him. And so where the testimony is about evenly balanced there can be no certainty, and therefore the doubt goes to the benefit of the defendant and to his acquittal. The preponderance of testimony is the rule of evidence which governs civil cases, and then if there is more testimony on the one side than on the other, the jury return a verdict in accordance with the preponderance and weight of that testimony. But the rule in criminal trials, is that it must be satisfactory to the jury beyond a reasonable doubt.

You are selected because you are considered to be good men, men of good ordinary solid sense, and not "cranks" not men easily led away by fancy or conjecture. And therefore you will consider the testimony like reasonable men in the exercise of a sound discretion, and if you come to the conclusion, upon the whole that there is no reasonable doubt, to convict, and on the contrary, if you are not entirely morally satisfied, you should acquit the defendant of the charge for which he is indicted.

I have been asked to charge you that the killing must be felonious. By that is meant when a party takes life with the intention of taking it; that is called a felonious intent, a malicious intent. The truth is, there is no substantial distinction between a felonious intent and a malicious intent, as it is the intention which constitutes the criminality of the act, and if the intention exist to take life, it is a felonious homicide. Gentlemen you may retire.

MR. COOK:—Will your Honor allow us to indicate exceptions, if we so desire, when the charge is written out?

THE DISTRICT ATTORNEY:—You cannot take exception to the whole charge.

MR. COOK:—No; but to indicate points, if we desire any in the end, as we may not.

THE DISTRICT ATTORNEY:—The attention of the court should be called to the points you desire to except to.

THE COURT:—If there is any point I have omitted, if you will state it now.

MR. COOK:—There is this point which perhaps was not stated as clearly as your Honor did the rest—that is that the felonious character could not be presumed, but must be proven; the words of Curtis in that case which your Honor said you would adopt; a single sentence which you marked.

THE COURT:—On that subject I think I have stated to the jury the law, that it is the intention with which the act is committed. The felonious intention is the malicious intention, to take life without authority or excuse.

MR. COOK:—"Or without excuse;" yes, that qualifies it.

THE COURT:—I supposed I had said that; that is the rule. It is a felonious homicide where it is committed with the intention of taking life without any excuse therefor.

GEO. B. CORKHILL and CHAS. S. MOORE for the government.

WILLIAM A. COOK and W. PIERCE BELL for the defendant.

VERDICT guilty of manslaughter.

#### ALIBI.

Where the evidence tends to prove the commission, by the defendant, of the crime charged in the indictment, at a particular time and place, and the defendant offers evidence tending to show that at such time he was at another place, it is error for the court to charge the jury that testimony tending to show such *alibi* was not to be considered, unless it established the fact by a preponderance of evidence. The burden of proof was not changed when the defendant undertook to prove an *alibi*, and if, by reason of the evidence in relation to such *alibi*, the jury should entertain reasonable doubt as to the defendant's guilt, he should be acquitted, although the jury might not be able to find that the *alibi* was fully proved.

Judgment reversed and cause remanded for a new trial.

Solomon Walters v. The State of Ohio. Error to the Court of Common Pleas of Richland County.

## United States Court of Claims.

DWIGHT J. McCANN vs. THE UNITED STATES.

1. Vouchers given by officers of the Government, in the regular and ordinary course of their business for services performed or articles purchased by their order for the public service, within the scope of their duty, unimpeached, are *prima facie* evidence of indebtedness on the part of the United States.
2. In this respect such vouchers differ from the certified balances of accounting officers, which, although conclusive upon the executive officers of the Government, have no force or effect in a court of justice.

RICHARDSON, J., delivered the opinion of the court.

The claimant has a voucher, given to him by an Indian agent, for services with his teams in removing the effects of Red Cloud Agency, in Wyoming, to White River, in Dakota, in the summer of 1873, with the compensation therein stated at \$14,375, upon which he has been paid \$10,000 and no more.

If nothing were before us except this voucher, proved to have been given by an Indian agent in the usual and regular course of his business and in the line of his official duty, the claimant would be entitled to recover the balance remaining unpaid.

A voucher given by an officer of the Government, in the regular and ordinary course of his business, for services performed or articles purchased by his order for the public service within the scope of his authority and the line of his duty, unimpeached, is *prima facie* evidence of indebtedness on the part of the United States, as therein stated. (*Parish v. The United States*, 2 C. Cls. R., 341; *Solomon v. The United States*, 19 Wall., 17 and 9 C. Cls. R., 54.)

In this respect the vouchers of executive officers who are authorized to make contracts, employ services, or purchase property for the public service, and whose duty it is to see to it that the money certified by them to be due has been actually and fairly earned within their own knowledge while acting in their official capacity, differ from the certified balances of accounting officers.

In the examination of claims in the Treasury Department these accounting officers act wholly upon the evidence presented to them by others, and have themselves no personal knowledge of the facts upon which the claims are founded. It is one of the fundamental principles upon which that department is established, and a useful and wise one it is, that the executive officers who pass upon public accounts shall be different from those who are

authorized to make contracts and incur liabilities in the expenditure of the public money.

The balances certified by the accounting officers are final and conclusive upon the executive branch of the Government, because of all the executive officers, they are the only ones who are authorized to perform that duty, and none are superior to them therein. But in this court such certification, whether for or against a claim, is without force or effect, because it is founded wholly upon the opinion of accounting officers, arrived at upon the evidence presented to them, evidence which, in the nature of the case, is often such as could not be admitted in any court of justice. It is so provided by statute (Rev. Stat., § 191), but it would be so if there were no statute on the subject, because it is the province of this court to adjudicate between the Government and claimants upon legal and competent evidence, and not upon hearsay or the opinions of others. (*McKnight's Case*, 13 C. Cls. R., 292; affirmed on appeal, 98 U. S. R., 179. *Real Estate Savings Bank Case*, 16 C. Cls. R., 335; affirmed on appeal, 104 U. S., 728.)

In the present case both parties have gone behind the *prima facie* evidence of the voucher given by the Indian agent, and it appears that there was no contract price fixed for the services of the claimant. The only controverted question before the court was whether or not the Indian agent had given his voucher for a compensation in excess of the value of the services upon a *quantum meruit*.

The claimant urges that the prices fixed in a previous written contract between him and the Commissioner of Indian Affairs for other and different services of a similar kind establish the true measure of compensation. The court is of a different opinion, and has found upon the whole evidence that the services of the claimant were worth much less than the sum he has been paid therefor.

The judgment of the court is that the claimant's petition be dismissed.

THE TRIAL was begun in Paris on the 12th inst. of the Marquis de Rays and seventeen other persons, who are charged with manslaughter, fraud, and infringement of the public companies and emigration laws. In the month of July, 1877, the Marquis de Rays advertised land for sale in the island of Port Brenton in Oceanica, and inaugurated a scheme for emigration thereto. The Legitimist papers interested themselves in the enterprise, and and five million francs were subscribed to further it. Of this sum the Marquis de Rays pocketed two million francs.

## Land Department.

Furnished by **SICKELS & RADALL.**  
Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

EX PARTE C. M. BIRD.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D., C. June, 1883.

REGISTER AND RECEIVER,  
Salt Lake City, Utah.

Only the area which, at date of a homestead or pre-emption entry, a city or town upon the public land is entitled by reason of its population, or by actual use and occupation for municipal purposes, to enter, is protected by its incorporation from settlement and entry.

In cases where a town has made its entry, and subsequently pre-emption or homestead entries are made within its incorporated limits, it will be allowed time within which to show cause why such entry should not be approved.

GENTLEMEN: In the case of C. M. Bird, pre-emption cash entry No. 2403, embracing N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , sec. 14, Tp. 8 S., R. 3 E., it appears from the proofs that said tract is within the incorporated limits of Springville, but it is not settled upon, occupied or used for purposes of trade and business.

Section 2258 of the Revised Statutes excludes from pre-emption lands within the limits of any incorporated town, but this provision is modified by the first section of the act of March 3, 1877 (19 Stats., 592). This act was remedial. The well-known evil it was designed to meet and suppress was that in some communities large bodies of land, much larger than any town under the law could acquire from the Government, were embraced within corporate limits, and their disposal to actual settlers thereby frustrated. This was met by the act cited, which, while taking care to provide for the rights and needs of cities and towns upon the public domain, provided that no incorporation should be held to exclude from pre-emption or homestead entry a greater quantity than the maximum area which a town could enter, except such portion in excess of that area as should be actually settled upon, inhabited, improved and used for business and municipal purposes. The area which a town may enter, within the maximum quantity of 2560 acres, is governed by its population. Sec. 2389, Rev. Stats. And it is that area alone that the incorporation of a town will protect. Consequently, if at the time a pre-emption or homestead entry is made to a tract within incorporated limits, the town is not by reason

of its population, or actual use and occupation, entitled to make entry, such claim is within and protected by said sec. 1, act of March 3, 1877. Commissioner's Decision Sept. 30, 1880; case of Seattle v. Bywater, and Secretary's decision affirming same (8 Copp, 143).

In the present case the town of Springville has made its entry and received patent, and the presumption is, that its entry and patent cover all the land it is entitled to secure title to, especially as it has failed to make its election, after due notice, of what lands it would retain, under section 3 of the act. But as it may be, notwithstanding the contrary presumption, that the town is entitled to make an additional entry under sec. 4, you will notify the proper authorities of Bird's entry, and that they will be allowed sixty days to show cause, if any, why it should not be approved.

This course will be followed in all cases of a similar nature, in order that the remedy for the evil stated may be advanced, and actual settlers secured in their rights.

Very respectfully,  
L. HARRISON.  
Acting Commissioner.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM

JUNE 20, 1883.

Philip F. Bashford v. Patrick B. Dunn, adm'r, &c. Argued and submitted.

JUNE 21, 1883.

John B. Alley v. Washington D. Quinter. Plea overruled and cause remanded for further proceedings.

Philip F. Bashford v. Patrick B. Dunn, adm'r, &c. Judgment of Special Term reversed and remanded for further proceedings.

Charles D. Gilmore v. B. J. Hilton. Leave to withdraw motion granted.

In re Geo. L. Hammaken. Appeal from Orphans' Court overruling motion to vacate letters granted November 4, 1880, dismissed.

John Campbell, adm'r, &c., v. Nathaniel Wilson. Argued and submitted.

Henry E. Davis, adm'r, &c., v. John J. Key. Same.

Charles L. Hine was admitted to practice.

W. W. McCullough v. D. M. Groff. Motion for rehearing set to be heard June 27.

Phoenix Mut. Life Ins. Co. v. Albert Grant et al. Appeal to S. C. U. S. from decree of 16th instant.

JUNE 26, 1883.

William W. Warden was admitted to practice. Benjamin U. Keyser v. Jane C. Hitz. Judgment of Special Term reversed and cause remanded for new trial.

W. W. McCullough v. D. B. Groff. Motion for rehearing overruled.



John F. Talburg v. James E. Beller et al. Argued and submitted.

Caroline Nelson v. Charles E. Henry et al. Motion for rehearing overruled.

John W. Bulkley, adm'r, &c., v. James E. Edwards et al., adm'rs, &c. Argued and submitted.

JUNE 28, 1883.

John M. Springman v. B. & P. R. R. Co. Inquisition confirmed.

Thomas J. Mackey, of South Carolina, was admitted to practice.

Emil S. Freiderick v. Charles Christiani et al. Argued and submitted.

JUNE 29, 1883.

S. G. L. Roberts, Geo. W. Upton, James S. Morrell and Thos. Hampson were admitted to practice.

Geo. A. Armes v. Otis Bigelow et ux. Rule to show cause argued and submitted.

#### **EQUITY COURT.—Justice James.**

Brown v. Butterfield. Restraining order granted. Bradley v. Keese. Pro confesso against defendant Catherine Keese.

JUNE 7, 1883.

Smith v. Smith. Testimony before examiner ordered taken.

Dallas v. Dallas. Guardian ad litem appointed. McGowan v. Shinn. Reference to John B. Patterson ordered.

Eustrich v. Eustrich. Referred to examiner to take proof.

Hensey v. Hensey. Same.

Shoemaker v. Shoemaker. Sale ratified nisi.

JUNE 8, 1883.

Looney v. Quill and Quill v. Looney. Auditor's report confirmed and distribution ordered.

Chase v. Chase. Same.

Bart v. Jueneman. Decree settling rights of parties.

Ex parte estate of Geo. H. V. Fox. Decree of Probate Court ratified.

JUNE 9, 1883.

Burke v. Bartlett. Motion for receiver denied. Geradorf v. Geradorf. Divorce a vin. mat. granted.

Middleton v. Middleton. Reference to auditor ordered.

Dallas v. Dallas. Reference to examiner ordered.

Gilmore v. Devlin. Motion to vacate decree denied.

JUNE 11, 1883.

Lord v. Lord. Decree a vin. mat. granted.

Stinde v. West. Restraining order granted.

JUNE 12, 1883.

Rogers v. Dye. Hearing ordered to General Term.

Browning v. Grant. Restraining order granted.

JUNE 13, 1883.

Moore v. Harrison. Motion to rescind order denied.

JUNE 14, 1883.

Nat. Savings Bank v. Adams. Sale ratified nisi. Callaghan v. English. Guardian ad litem appointed.

Burdette v. Burdette. Commission to take testimony ordered to issue.

Alley v. Quinter. Hearing ordered to General Term.

Murdock v. Fletcher. Rule on certain parties.

JUNE 15, 1883.

Grome v. Boucher. Sale confirmed nisi.

Leddy v. Leddy. Sale confirmed nisi and referred to auditor.

Moore v. Harrison. Guardian ad litem appointed.

Scott v. Scott. Divorce a vin. mat. granted.

Brown v. Herth. Referred to auditor.

Gody v. Lawlis. Testimony ordered taken.

Smallwood v. Lynch. Sale ordered and trustee appointed to sell.

Winlingder v. Dougherty. Sale ratified nisi.

JUNE 16, 1883.

Brown v. Brown. Referred to auditor.

Downham v. Kelly. Payment and substitution of trustee ordered.

JUNE 18, 1883.

Burdette v. Burdette. Hearing certified to General Term.

JUNE 19, 1883.

Brown v. Brown. Sale ordered and trustee appointed to sell.

Richardson v. Richardson. Testimony before examiner ordered taken.

Cornelius v. DeVaughn. Guardian of lunatic appointed.

Cohen v. Cohen. Sale ratified nisi.

Leddy v. Fitzmorris. Trustee ordered to pay.

Barker v. Gilmore. Time extended to take testimony.

JUNE 20, 1883.

Wood v. Wood. Auditor's report confirmed.

Thompson v. Arnold. Sale finally ratified and referred to auditor.

Nickerson v. Nickerson. Restraining order.

In re John S. Cowles, non compos. Committee appointed.

#### **CIRCUIT COURT.—Justice Mac Arthur.**

JUNE 5, 1883.

Hopkins v. District of Columbia. Verdict for defendant.

Richards v. Wilson. Time to plead extended.

Libbey v. Wine, Garnishee. Judgment of condemnation.

Maynihan v. Desmond. Verdict for defendant.

Sherwood et ux. v. District of Columbia. Motion for new trial filed.

JUNE 6, 1883.

Barbour & Hamilton v. Dowling. Judgment by default.

Beibe v. Sinfert. Same.

Galt & Co. v. Greir. Same.

Galt & Co. v. Dowling. Same.

Hume v. Neil. Same.

Shafer & Co. v. McGee. Same.

King v. Sweet. Same.

Sharmon v. Snelbaker. Same.

Anderson v. Smith. Dismissed.

Van Riswick v. Cissell et al. Demurrer sustained and leave to plead.

Brown & Co. v. Dowling. Judgment by default.

Northern Lib. Market Co. v. Glick. Same.

White & Co. v. Cake. Same.

Independent Ice Co. v. Cake. Same.

JUNE 7, 1883.

Milstead, jr., v. Melling. Judgment by default.

Heymans v. Hynes. Same.

JUNE 8, 1883.

Tolman v. Phillips. Verdict for plaintiff for \$500.

Morris & Sons v. Savage. Judgment nisi doct.

Daley & Co. v. Fitzmorris. Verdict for plaintiff for \$3,022.82.

Gove v. Leitch. Verdict for defendant for \$425.

Brown v. Clark et al. Verdict for plaintiff against Allen C. Clark, \$161. Default against Appleton P. Clark.

Seltz & Mertz v. Taylor. Verdict for plaintiff for \$141.75.

JUNE 9, 1883.

Kendall v. Strisby & Cannon. Judgment by default.

Riverside Print Co. v. Snelbaker. Time given to plead.

Payton v. B. & P. R. R. Co. Demurrer to declaration overruled.

Costello v. Knight. Demurrer to plea sustained.

U. S. v. Dudley et al. Same.

U. S. v. Brown et al. Demurrers sustained and leave to plead.

Daly v. Fitzmorris. New trial granted.

JUNE 11, 1883.

Shipman v. Magarity. Leave of defendant to plead statute of limitation.

Todd's adm'r v. Yeabower. Fiat on Scira Facias.

Middleton v. McMurtrie et al. Verdict for plaintiff for \$366.66.

Tolman v. Phelps. Motion for new trial filed.

JUNE 13, 1883.

Joachim v. Joachim. Order of publication.

Shipman v. Magarity. Time allowed to reply to plea.

JUNE 14, 1883.

Meresheimer & Co. v. Adams Express Co. Leave to plead extended.

Cullinane v. Blumenberg. Motion for continuance overruled.

Birch v. Blumenberg. Same.

Hurley v. Joseph. Verdict for defendant for \$50.

JUNE 15, 1883.

Hine v. Magarity. Verdict for defendant.

Joyce's ex'rs v. McLaughlin. Judgment of condemnation against garnishee.

JUNE 16, 1883.

Moses v. Howgate and U. S. v. Howgate. Judgment of condemnation against Wyman and personal property on 14th street.

Galt, Bro. & Co. v. Hocker. Judgment by default.

Green et al. v. Eslin et al. Leave to amend declaration.

Worthington v. Keightley. Motion to strike out declaration granted.

Goodrich v. Gillam. Motion to dismiss granted.

Johnson v. Field. Order for commission to take testimony.

#### CRIMINAL COURT.—Justice Wylie.

JUNE 16, 1883.

U. S. v. Samuel Bennett. Plead guilty of assault. Sentenced to a fine of \$10.

JUNE 18, 1883.

U. S. v. Wm. P. Kellogg. Indicted for illegally receiving money whilst a Senator. Defendant plead in abatement.

U. S. v. Isaac Landic. Second offense petit larceny. Plead guilty. Sentenced for one year.

U. S. v. Wm. H. Solomon. Larceny. Plead guilty. Sentenced for three years.

Smith & Son v. Glascott. Motion to set aside judgment denied.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JUNE 22, 1883.

24561. Albanus L. Johnson v. Maria Stierlin. Certiorari. Defs attys, Harris and Oliver.

JUNE 25, 1883.

24562. John F. May v. John R. Cornell. Account, rent \$600. Pliffs atty, W. B. Webb.

JUNE 26, 1883.

24563. William Metzger et al. v. George W. Banagan. Judgment of Justice Bundy, \$100. Pliffs atty, F. T. Browning.

24564. Charles C. Egon De Ghent v. Katharine Chase. Certiorari. Defs atty, R. D. Mussey.

24565. John R. McOathran v. John Harrison. Replevin. Pliffs atty, B. H. Webb.

JUNE 27, 1883.

24566. Matthew G. Emery v. Bennett B. Smith et al. Rent, \$220. Pliffs atty, S. S. Henkle.

24567. Samuel L. Phillips v. Philip Huckel. Attachment for rent. Pliffs atty, R. E. Perry.

### IN EQUITY.—New Suits.

JUNE 22, 1883.

8615. Sarah E. Sayre v. William Sayre. For divorce. Com. sol., J. P. Jordan.

JUNE 26, 1883.

8616. Millard Metzger et al. v. George W. Banagan et al. To vacate fraudulent deed. Com. sol., F. T. Browning.

JUNE 27, 1883.

8617. Annie Hughes v. Mary C. Kirby et al. For acct., Com. sol., C. Carrington.

8618. The Washington Benefit Endowment Association, of the District of Columbia v. George H. Wood et al. Interpleader. Com. sol., I. L. Johnson.

8619. The Mutual Benefit Life Insurance Company v. William W. Post et al. Interpleader. Com. sol., A. S. Worthington.

### PROBATE COURT.—Justice James.

JUNE 5, 1883.

Will of James Madison; copy filed and recorded. Estate of Frederick W. Sellhausen; inventory returned by executor.

Will of Sarah H. B. Magruder; filed for probate and publication ordered.

Will of Cornelia W. S. Barid; filed for probate. Estate of Elizabeth Miller; petition for probate and letters testamentary of Ad., c. t. a., &c.

JUNE 6, 1883.

Will of Caroline Fowler; exhibited and fully proved. In re estate of Fisher A. Foster; inventory of personality returned by executor.

Estate of Catharine Brown; letters withheld for reasons. Estate of Wm. Barnes; citation against son of Wm. Barnes.

Estate of Gustavus H. Scott; notice to executrix for settlement.

Estate of Mary B. Marbury; answer of administratrix filed by her attorney.

JUNE 7, 1883.

Estate of Cornelia W. Smith; petition for letters and renunciation of executor.

Estate of Abby L. Bodfish; administrator bonded and qualified.

Catharine T. Fox, guardian; allowed to incur real estate of ward.

Estate of Anthony M. Dutch; bond of executrix completed.

JUNE 8, 1883.

Estate of Wm. H. Howell; administrator appointed and bonded.

Estate of Catharine Brown; cancellation of bond. In re Daniel Murray, guardian; directed to account.

In re John B. Patterson, guardian; appointed and bonded.

Will of John W. Scott; filed and fully proved. Will and codicil of Josiah Essex; admitted to probate and letters granted.

Will of Emily Johnson; filed for probate and publication ordered.

Will of Belinda Kondrup; fully proved. Estate of Cornelia W. Smith; will fully proved and letters granted and executor bonded.

Philip E. Wilson, guardian; appointed and bonded. Charles P. Wannal, guardian; same.

Mary H. Masters, guardian; same. Will of Edward Middleton; admitted to probate and letters granted.

Estate of Benjamin F. Gridley; administrator appointed and bonded.

Estate of John M. Johnson; inventory of personalty and order of sale.

Estate of Mathias L. Allg; executor directed to sell bonds. Estate of Louisa Wagner; will fully proved and admitted to probate and letters granted.

Estate of Sarah W. Parris; executor bonded and qualified.

Estate of John Keithley; will fully proved and admitted to probate, administrator c. t. a., bonded.

In re Catharine T. Fox; decree from Equity Court ratifying decree of Probate Court filed.

Estate of Hayward M. Hutchinson; will proved by two witnesses.

Estate of Elizabeth Miller; will admitted to probate and letters granted, administrator c. t. a., bonded.

Estate of Wm. D. Aiken; motion to pay fund argued.

Estate of John J. F. Joachim; acknowledgment of service filed; motion for order of reference argued.

Estate of Rachel Johnson; administrator bonded and qualified; will admitted to probate.

Accounts passed:

Estate of James C. Kennedy; final account of executor.

Estate of John Finney; fourth account of executor.

Estate of Wm. Furnage; first account of administratrix.

Estate of Joseph Hile; final account of executor.

Estate of Francis B. Lord; first account of executor.

Estate of Thomas T. O'Leary; final account of administrator.

Estate of John W. Rightstine and Mary R. Rightstine, guardians; first account of administratrix and guardian.

Lydia A. Wagoner, guardian; second account

JUNE 9, 1883

James W. Gray, guardian; appointed, qualified and bonded.

Will of Hayward M. Hutchinson; fully proved.

Estate of Benjamin F. Gridley; administrator bonded and qualified.

Estate of Rachel Johnson; will admitted to probate and letters of administration c. t. a. issued.

Estate of Noble Young; receipt of commissioner of receipt of letters containing will filed.

JUNE 11, 1883.

Estate of Cornelia A. Dickinson; claim filed.

Will of Emily Johnson; proved by one witness.

Will of James C. Palmer; filed and admitted to probate; letters granted.

Estate of Hayward M. Hutchinson; will admitted to probate; two daughters of deceased cited.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of George A. Morrison, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1883.  
FRANCIS W. EDWARDS,  
1557 14th street, northwest.

26-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Drager, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.  
MARY DRAEGER, Administratrix.  
JOSEPH FORRESTER, Solicitor.

26-2

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of June, 1883.

MICHAEL JOACHIM, EXECUTOR OF  
LOUISA JOACHIM

No. 24,528. Law Doc.

JOHN O. JOACHIM.  
On motion of the plaintiff, by Messrs. Crittenden & Mackey, her solicitors, it is ordered that the defendant, John O. Joachim, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. MAC ARTHUR, Justice.  
True copy. Test: 26-3 R. J. MEIGS, Clerk.

### Legal Notice.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Ezekiel Hughes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1883.  
26-3 CHAS. H. CRAGIN, Jr., Administrator c. t. a.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of June, 1883.

EDWIN B. HAY ET AL

No. 5611. Eq. Doc. 23.

GEORGE E. KIRK, TRUSTEE, ET AL.  
On motion of the plaintiffs, by Mr. Edwin B. Hay, their solicitor, it is ordered that the defendant, George Rufus Zell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 26-3 R. J. MEIGS, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Cross, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1883.  
26-3 WILLIAM R. LAPHAM,  
Room 82½ Interior Department.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Belinda Kondrup, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1883.  
AUGUST PETERSON, Executor.  
CARUSI & MILLER, Solicitors.

26-3

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ROBERT COHEN

No. 7,862. Equity Docket 21.

J. H. COHEN ET AL.  
Andrew B. Duval and Henry E. Davis, trustees, having reported to the court the following sales of the real estate in the proceedings mentioned, viz.: said part of lot five, in square four hundred and sixty-one, to Robert Cohen, for \$16,006; the north 25 feet front by depth of lot nine, in square seven hundred and eighty-five, to Ignatius Miller, for \$2,975; the south part of said lot nine, to Albert M. Read, for \$673 37; and said sub-lot twenty-four, in square three hundred and fifty-eight, to Ellen C. Toomey, for \$762 51; and that said Cohen and Miller, desire to pay all cash for their respective purchases; it is, by the court, this 19th day of June, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed on the 19th day of July, 1883, unless cause to the contrary thereof be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said last named day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 26-3 H. J. RAMSDELL, Register of Wills.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John G. Killian, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1883.  
26-3 REGINALD FENDALL, Administrator c. t. a.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

**EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8696, Docket 23.**

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 28th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.68; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$600 to Robert E. Frey, as Treasurer of 12th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test:

R. J. MEIGS, Clerk.

26-6

By M. A. CLANCEY, Asst. Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Lilley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1883.

FREDERICK B. LILLEY, Administrator c. t. a.

CRITTENDEN & MACKAY, Solicitors. 26-6

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Sitting in Equity.**

**JAMES L. BARBOUR, Admr.,**

No. 7,619. In Equity.

**OWEN LEDDY,**

Consolidated with

**CATHARINE LEDDY**

No. 7,961. In Equity

**MICHAEL LEDDY ET AL.**

On consideration of the trustees' report of sales made of the real estate of Owen Leddy, Jr., deceased, it is this 15th day of June, A. D. 1883, ordered, adjudged and decreed, that the sales be and the same are hereby ratified unless cause to the contrary thereof be shown on or before the 15th day of July, A. D. 1883. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the City of Washington, D. C., once a week for three successive weeks before the said 15th day of July.

By the Court.

CHAS. P. JAMES, Justice.

True copy. Test:

26-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Michael H. Homiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

MARY JANE HOMILLER, Administratrix.

HINE & THOMAS, Solicitors. 25-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Barnes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1883.

SARAH A. L. BARNES, Administratrix.

DANIEL O'C. CALLAGHAN, Solicitor. 25-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of June, 1883.

LUCINDA H. SCOTT, Executrix.

EDMUND A. BAILEY, Solicitor. 25-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anthony M. Dutch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY A. DUTCH, Executrix.

H. T. WISWALL, Solicitor. 25-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James Sayers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

25-3

MARGARET SAYERS, Executrix.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ELLIDA J. MIDDLETON, Executrix.

H. T. TAGGART, Solicitor. 25-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah W. Farris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

SAMUEL B. FARRIS, Executor.  
CHAS. S. WHITMAN, Solicitor. 25-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of June, 1883.**

JULIA B. BOMAR

ROBERT H. BOMAR.

On motion of the plaintiff, by Mr. Carpenter, her solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 25-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Alcorn, late of Howard Co., Maryland, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

WILLIAM E. LINN, Administrator.  
WILLIAM E. LINN, Attorney at law,  
1338 High street,  
Georgetown, D. C. 25-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity.**

THEODORE B. CROWE

JOSEPH W. BOUCHER ET AL.

On reading report of sale of real estate of the late Alfred M. Boucher, this day filed by Messrs. R. P. Jackson and William A. Meloy, trustees:

It is ordered, this 15th day of June, A. D. 1883, that said sale be ratified and confirmed unless cause to the contrary be shown to this court on or before the 16th day of July, next. Provided, a copy of this order be published for three weeks prior thereto in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 25-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hayward M. Hutchinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1883.

ELIZA C. HUTCHINSON, Executrix.  
WM. B. WEBB, Solicitor. 25-3

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883,

SAM'L. R. BOND, Administrator. 25-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 23, 1883.**

In the matter of the Will of Cornelius Cohan, alias Cornelius Crowley, late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Kearns.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
R. E. CRAWFORD, Solicitor. 25-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

BENJAMIN L. JACKSON ET AL.

v.

ELI S. BLACKWOOD ET AL.

Mahlon Ashford and Job Barnard, trustees herein, having reported a sale of lot 49, of Augustus Davis' subdivision of original lot numbered 8, in square numbered 512, in Washington City, in the District of Columbia, to Samuel T. Williams, for \$4,060:

It is, this 22d day of June, 1883, Ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 22d day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: R. J. MEIGS, Clerk.  
EDWARDS & BARNARD, Solicitors. 25-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1883.  
24-3 JOHN W. HUNTER, Executor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity, the 14th day of June, 1883.**

THE NATIONAL SAVINGS' BANK,  
of the District of Columbia.

v.

SAMUEL ADAMS ET AL.

The report of Benjamin P. Snyder, trustee in the above entitled cause, filed this day therein, shows that he has sold the premises described with bill to Henry T. Greer, for the sum of \$5,700 cash, at public auction. Upon consideration of the said report, it is, this 14th day of June, A. D. 1883, ordered, that the said sale be and the same is in all respects, including the modification of the terms of sale to a cash payment in full, hereby ratified and confirmed unless cause be shown to the contrary within thirty days from the date hereof. Provided, nevertheless, that a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before the expiration of said period of thirty days.

By the Court. A. B. MAGNER, Assoc. Justice.  
A true copy. Test: 24-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the matter of the Estate of William Lilley, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Frederick B. Lilley.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
CRITTENDEN & MACKY, Solicitors. 24-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Essex, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ANDREW J. BIEDLER, Executor.

EDWARDS & BARNARD, Solicitors. 24-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Andrew Rothwell, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1883.

GEORGE L. SHERIFF,

ALMARIN C. RICHARDS,

Executors.

24-4

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louise Wagner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

HENRY WAGNER, Executor.

CHAS. A. WALTER, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 19, 1883.**

In the matter of the Will of Michael Reuter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles Walter.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of June, 1883.**

SONS OF TEMPERANCE NATIONAL

MUTUAL RELIEF SOCIETY

v.

No. 8587. Eq. Doc. 23.

ANASTASIA HIGGINS ET AL.

On motion of the plaintiff, by Mr. S. M. Yeatman, its solicitor, it is ordered that the defendants, Anastasia Higgins and Eli Higgins, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 24-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Joseph F. Hodgson, Administrator of John B. Castelli, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of July A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity. June 13, 1883.**

EDWARD TEMPLE ET AL.

v.

No. 7767. Eq. Doc. 21.

CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot numbered five [5], in square numbered six hundred and forty [640], to Charles H. Parker, for \$197.10; lot numbered eight [8], in square numbered six hundred and forty-two [642], for \$180, to Charles H. Parker; all of square numbered six hundred and forty-five [645], to J. Harrison Johnson. O. T. Thompson and Edward D. Wright, for \$4,731.46; lot numbered two [2], in square numbered one thousand and eleven [1,011], to Doretta F. Talcott, for \$466.50; lot numbered eight [8], in square numbered one thousand and seventy [1,070], to Aug. Burgdorf, for \$132.48; lots numbered nine [9], ten [10], eleven [11], twelve [12], thirteen [13] and fourteen [14], in square numbered one hundred and twenty-eight [128], to Aug. Burgdorf, for \$2,000; south one-half [½], of lot numbered ten [10], in square numbered twenty-eight [28], to Aug. Burgdorf, for \$250; lots numbered two and three [2 and 3], in square numbered twenty [20], for \$115; lot numbered nineteen [19], in square numbered six hundred and eight [608], for \$50, to Aug. Burgdorf; lots numbered two [2] and fourteen [14], in square numbered one thousand and ninety-five [1,095], and lots numbered five [5] and six [6], in square numbered one thousand and ninety-six [1,096], and the south forty [40] feet front of lot numbered one [1], and all of lot numbered seventeen [17], in square numbered one thousand and ninety-seven [1,097], to Aug. Burgdorf, for \$468.39; it is, this 13th day of June, A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary thereof be shown on or before the 13th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 13th day of July, A. D. 1883.

By the Court.

CHARLES P. JAMES, Justice.

A true copy.

Test: 24-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. June 16, 1883.**

In the matter of the estate of John W. Starr, late of the said District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah M. Starr.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of July, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: 24-3

H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Samuel C. Raub, Executor, of George N. Hopkins, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 13th day of July, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

H. J. RAMSDELL, Register of Wills.

WM. T. JOHNSON, Solicitor.

24-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

EMMA J. WINNINGER, Guardian

v.

No. 8587. Eq. Doc., 23

WILLIAM B. DOUGHERTY.

Upon hearing the report of Thomas W. Fowler, trustee, showing the sale of lot seventy-five (75), in square 180, at the price of thirty-two cents per square foot, it is, this 16th day of June, 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of July, 1883. Provided, that a copy of this order be published in the Law Reporter once a week for three weeks before said day.

By the Court.

CHAS. P. JAMES, Justice.

True copy.

24-3

Test: R. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Emily Johnson, formerly of Frederick, Md., late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by John H. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **H. J. RAMSDALL, Register of Wills.**  
**WORTHINGTON & HEALD, Solicitors.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. June 8, 1883.**

**CHARLES W. PROCTOR** } No. 3,593. Equity Docket 23.

**MARY E. PROCTOR.**  
Notice of the pendency of the petition for divorce in the above entitled cause is hereby given to the defendant; and it is ordered that the defendant cause her appearance to be entered herein on or before the commencement of the term occurring forty days after this day, otherwise the court will proceed to hear and determine said cause.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 23-3 **R. J. MEIGS, Clerk**

**CLERK'S OFFICE OF THE SUPREME COURT OF THE District of Columbia. May 31, 1883.**

I certify that Dorsey E. W. Carter, has filed in the Supreme Court of the District of Columbia, a petition praying that he may have his name of Dorsey E. W. Carter, changed to Dorsey E. W. Towson, alleging as his reasons for filing the same that Dorsey E. W. Towson, is his real and proper name, which was changed during his minority, and he desires to resume the name of his ancestors.

Witness my hand and the seal of said court this 31st day of May, 1883.

23-3 **R. J. MEIGS, Clerk,**  
By **M. A. OLANCY, Assistant Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Fisher A. Foster, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day June, 1883.

**WILLIAM B. SNELL, Executor.**  
**B. F. LEIGHTON, Solicitor.** 23-3

**THIS IS TO GIVE NOTICE**

That the subscriber of Freehold, New Jersey, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Howell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber or his solicitor, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

**WILLIAM S. THROCKMORTON, Administrator.**  
**O. D. FOWLER, Solicitor, 506 D street, n. w.** 23-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Oscar H. Lackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1883.

**OLARA C. LACKEY, Executrix,**  
**JAS. H. SAVILLE, Solicitor.** 23-3

*Legal Notices.*

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Abby L. Bodfish, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1883.

**F. D. SEWALL, Administrator.**  
**J. W. & GEO. L. DOUGLASS, Solicitors.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. May 25, 1883.**

In the matter of the Estate of Samuel Magee, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Lambert M. Bergman and Laura Magee.

All persons interested are hereby notified to appear in this court on Monday, the 25th day of June next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: 23-3 **H. J. RAMSDALL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 4, 1883.**

In the case of William H. Young, Executor of James A. Barr, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: **H. J. RAMSDALL, Register of Wills.**  
**SAML. C. MILLS, Solicitor.** 23-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity. June 7th, 1883.**

**FRANCIS D. SHOENMAKER ET AL.** } No. 8,631. Eq. Dec. 23.

**EDWARD SHOENMAKER ET AL.**  
It is by the court, this 7th day of June, 1883, ordered that the offer to purchase the real estate in said cause mentioned made by William M. Galt, and reported by Charles H. Oagin, Jr., and William A. Gordon, trustees, be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown on or before the 9th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 9th day of July, 1883. The report states the amount offered to be \$10,000.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 23-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 8, 1883.**

In the matter of the Will of Sarah H. B. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: 23-3 **H. J. RAMSDALL, Register of Wills.**



# Washington Law Reporter

WASHINGTON - - - - - July 7, 1882.

GEORGE B. CORKHILL - - - EDITOR

## A Widow's Rights.

A decision was rendered yesterday by Judge Donohue, in Supreme Court, Special Term, in a suit brought by the Polar Star Mutual Benefit Association against Lena Boniface, otherwise known as Lena Rosenthal, John B. Bonfort, otherwise known as John Bonifazius, Bertha Wollenweber, Sarah A. Aquist, and Regine Doe, whose surname is unknown. The suit was brought to have judicially determined the right to \$825 due upon the death of Lewis Boniface, who was a member of the association, and who died on March 5, 1882. This money was payable—first, to the person designated on the certificate of membership; second, to the widow of the deceased; and, third, to his children. There was no designation upon the certificate of membership, and Lena Boniface claimed the exclusive title to the fund, upon the ground that she was the lawful wife of Mr. Boniface. The other defendant asserted that they were the children of Mr. Boniface and his wife, Theresa Boniface. They denied that Lena Boniface ever was the wife of the decedent. They claimed that Mr. Boniface married their mother in March, 1842, at Hamburg, Germany, and that after her death he did not marry again. Judge Donohue, in deciding the question, says: "A meretricious relation, known to be such by the parties, cannot be validated even by a holding out as husband and wife, but when the original relation was honestly entered into by one of the parties without knowledge of a prior marriage by the other, the rule does not apply, and I think the proofs in this case entitle the defendant Lena Boniface to the money on the policy as his widow."—*Daily Register*.

THE United States Supreme Court, when it adjourned, May 7th, ordered the reporter to publish this year one *additional* volume, and, if need be, two.

Two recent cases before the Court of Claims, *Von Hoffman v. The United States*, and the *Manhattan Savings Institution v. The Same*, involved an important question. Certain coupon bonds of the United States, known as Five-Twenties, on their face payable July 1, 1885, had been "called" for redemption by the Secretary of the Treasury, in conformity with their terms and the statutes in that behalf, and had become redeemable under these calls, when they were stolen from the Savings Institution, and afterwards bought for full value, in entire good faith, with due care and without notice, by Von Hoffman. The sole question was, whether these bonds which, in the absence of a call for redemption, did not mature until 1885, did, by reason of the call, become overdue paper, which Von Hoffman took subject to any defects of title, and to the paramount rights of the true owner. In an opinion of great clearness, Chief Justice Drake distinguishes this class of bonds, redeemable before their face maturity at the maker's pleasure, from ordinary commercial paper, whose date of payment is absolute upon its face, and reaches the conclusion that the bonds in question did, in law, mature on the day when the holders had the right, in pursuance of the Secretary's call, to receive payment; and that whoever bought the bonds thereafter took them as overdue paper, with only such title as the vendor had, and liable to have such title disputed and successfully impeached.—*American Law Review*.

WHERE a manufacturer or dealer contracts to supply an article which he manufactures or produces, so that the buyer necessarily trusts to the judgment or skill of the manufacturer or dealer, there is in that case an implied term or warranty that it shall be reasonably fit for the purpose to which it is to be applied. *Brown v. Edgington*, 2 Man. & G., 279.

THE Supreme Court of Ohio is almost unanimous in sustaining the constitutionality of the Scott Liquor Law. Chief-Justice Johnson, though absent during the trial, joins with the other members of the court in sustaining the law.



# Supreme Court District of Columbia

## GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

EMIL JUSTH

vs.

BENJAMIN HOLLIDAY.

AT LAW. No. 20,516.

{ Decided May 7, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and COX sitting.

1. Where a contract is made for the delivery or acceptance of securities at a future day, at a price named, and neither party at the time of making the contract, intends to deliver or accept them, but merely to pay differences, according to the rise or fall of the market, the contract is a gambling one and is void as contrary to public policy.
2. The endorser of a promissory note given on account of such dealings as are recognized as gambling transactions can rely upon their illegality as a defence to an action on the note.
3. In an action to recover money, where the defence set up is that the contract was a stock gambling one, the real question for determination is the *bona fides* of the transaction. It is not the form but the intent with which the scheme was planned. If neither party contemplated that there should be a delivery of the stock, but merely to pay differences according to the rise or fall of the market, the contract is a gambling one.
4. It is not the province of the court in General Term, on a bill of exceptions to the ruling of the court below, to decide as to the weight of the evidence, and its sufficiency in fact, but to determine whether the record discloses sufficient evidence in law to justify the granting of the prayer refused.

THE CASE is stated in the opinion.

JAMES LOWNDES for plaintiff.

COOK & COLE for defendant.

Mr. Justice HAGNER delivered the opinion of the court.

This is an action brought by the plaintiff against the defendant, upon a promissory note, of which the following is a copy :

"\$8,500. NEW YORK, Feb. 10, 1876.

"Six months after date I promise to pay to the order of myself, with interest at 7 per cent., eighty-five hundred dollars, at the office of Justh & Co., 19 Broad street, value received.

"G. A. CUSTER.

"Endorsed :

"G. A. CUSTER.

"BEN. HOLLIDAY.

"Received, New York, March 21, 1878, nine hundred and twenty-six dollars (\$926.00).

"JUSTH & Co.

"A. F., JR."

The declaration contained four special counts, in two of which the defendant was sued as joint maker with Custer and in the others as endorser. In one of the four counts the note was described as payable to the plaintiff; in another as payable to bearer; and in the others as payable to Custer. The common counts were added, but afterwards stricken out.

Besides the pleas of *non assumpsit* and not indebted, and that there was no valid consideration for the giving and endorsement of the note, the defendant interposed the following plea :

"And for further plea, the said defendant says that the note in the declaration mentioned was executed by the said Custer, and endorsed by this defendant for the amount of an alleged account which the said plaintiffs claimed to have against the said Custer, growing out of certain alleged purchases and sales of stock by the said plaintiffs for and on account of the said Custer. And the defendant avers that there were no *bona fide* sales of stocks by the plaintiffs, to or for said Custer, but the alleged amount for which said note was given was for the difference between the price of said stocks at the time of the pretended sale of them by the said plaintiffs to said Custer, or the pretended purchasing thereof by them for him, and the prices thereof at the time of the pretended sale thereof by said plaintiffs for said Custer, and that said Custer did not deal in said stocks, or buy them of or sell them to the said plaintiffs, or buy or sell them through the agency of the said plaintiffs, or otherwise, and no stocks were ever delivered to said Custer by or through the plaintiffs, or intended so to be, but that the transactions between them, in consideration of which said note was made and endorsed, were wagers upon the prices of said stocks, and that no other or different consideration passed between the said plaintiffs and Custer, or defendant, for the giving or endorsement of said note, and the defendant did not know, at the time he endorsed the same, what the consideration thereof was."

Issue was joined upon these pleas, and the case was tried before a jury, which rendered a verdict for the plaintiff for the amount of the note and interest, after crediting the \$926, which the plaintiff stated he had received on account from the estate of Custer.

At the trial, the plaintiff proved the execution and endorsement of the note and its due protest, and there rested.

The defendant thereupon read in evidence the testimony taken under a commission issued on the order of the plaintiff, who was the only witness examined.

He testified in chief, in his own behalf, and was cross-examined by the defendant. There were returned with the commission three communications addressed by Gen'l Custer to the plaintiff, and seven sheets of paper, produced by the plaintiff, and which he stated, represented the transactions had between him and Gen'l Custer, so far as he was able to furnish the same. And this being all the evidence in the case, the defendant prayed the court to grant the following instruction:

"If the jury believe from the evidence that the note in the declaration mentioned was given by the said Custer and endorsed by defendant for a balance of accounts, alleged to be due from said Custer to the plaintiff; and that such alleged balance arose upon alleged purchases and sales of stocks by Justh & Co., in the name of said Custer, or to or for him, and that no stocks so alleged to be purchased by Justh & Co., in the name of said Custer, or alleged to be sold to or for him, were ever delivered to him; and that it was the intention of the said parties that such stocks should not be delivered to said Custer, but that he should receive only the profits on the alleged purchases and sales of said stocks, if any should be made, or be liable for the losses, if any should occur, then such transactions were illegal, and the plaintiff cannot recover."

The case comes here upon exceptions to the refusal of the court to give this instruction to the jury:

1st. The general principle is well settled as to the conditions which will invalidate contracts of the description referred to in the prayer.

In the excellent work of Mr. Dos Passos, of the New York bar, on the Law of Stock Brokers, it is thus stated: "Where a contract is made for the delivery or acceptance of securities at a future day, at a price named, and neither party, at the time of making the contract, intends to deliver or accept the shares, but merely to pay differences, according to the rise or fall of the market, the contract is void, either by virtue of statute or as contrary to public policy." P. 477.

All observers agree that the inevitable effect of such dealings is to encourage wild speculations; to derange prices to the detriment of the community; to discourage the disposition to engage in steady business or labor, where the gains, though sure, are too slow to satisfy the thirst for gaming when once aroused; and to fill the cities with the bankrupt victims of such disasters as any "Black Friday" may develop. As was well expressed in 55 Pa. State, 298, Bruce's Appeal, "Anything which induces men to risk

their money or property without any other hope of return than to get for nothing any given amount from another, is gambling, and demoralizes the community, no matter by what name it may be called."

The extent of this form of speculation now rife in our country is unprecedented, unless perhaps by the almost universal gambling transactions that distinguished the era of the famous South Sea Bubble.

Mr. Dos Passos states in his work that according to financial authorities the sales of stocks alone, at the New York Stock Exchange, in the year 1881, reached the enormous total of 128,162,466 shares, representing in cash at \$100 each share the prodigious sum of twelve billion eight hundred and sixteen millions two hundred and forty-six thousand dollars. No one doubts that much the larger part of these transactions are illicit as gaming contracts: and when it is remembered that this fierce greed for gain without labor has to so great an extent subjected to the same wild speculation the commodities necessary to sustain life, that the humblest housekeeper is frequently the innocent sufferer, by mere wagering transactions; the far-reaching extent of this pernicious traffic may, in some degree, be realized. The plainest principles of propriety and public policy, therefore, should warn the courts to adhere tenaciously to such protection against the further spread of the evil, as they have been able to interpose to the recovery upon contracts originating in stock gambling.

2nd. That the endorser of a note given on account of such dealings as are recognized as gaming transactions can rely upon their illegality as a defense to an action on the note, was settled as far back as 1794, in the case of *Steers v. Laskley*, 6 T. R., 61. There the defendant was engaged in stock-jobbing transactions through a broker, and the plaintiff had acted as one of the referees to determine the amount due to the broker on the dealings. The broker drew upon the defendant to pay part of the adjudged sum. The bill was accepted by the defendant and endorsed by the broker to the plaintiff, who sued the defendant to recover the amount of the bill. Lord Kenyer non-suited the plaintiff, being of the opinion that as the bill grew out of a stock-jobbing transaction, which was known to the plaintiff, he could not recover upon it.

In overruling the motion for a new trial his lordship said: "The bill on which the action is brought was given for these very differences, and Wilson (the broker) could not have enforced payment of it. Then the security was endorsed over to the plaintiff, he know-

ing of the illegality of the contract between Wilson and the defendant, for he was the arbitrator to settle their accounts; and under such circumstances he cannot be permitted to recover on the bill in a court of law."

And so the law remains to this time. Dos Passos, 478.

3rd. It was insisted on behalf of the plaintiff that the present case should be withdrawn from the operation of the rule as to wagering contracts, since the plaintiff was only the *agent* of Custer, to negotiate for the stocks with other persons who should be considered as the principals who made the purchases.

But conceding the facts to be as supposed, still that circumstance would not prevent the defendant from interposing this defense. The point has been passed upon in several of the cases cited in the argument.

In 7 Bissell, Ex parte Green, 342, the court says, in answering this objection:

"These parties, it seems to me, fall within the statute. They advanced the margins at the time to make the gaming contract, and without their aid in that respect the contracts would not have been made. . . . So, if these contracts are gaming contracts, they must be held to have advanced the money for margins to make them, and their claim for re-payment falls within the prohibited class mentioned in the act. They made the illegal contracts and advanced the money required to give them colorable validity. To take their case out of the statute would be establishing a most flagrant evasion of its provisions."

So in 39 Michigan, 337, Gregory v. Wandell, the defendant, the broker, insisted that he ordered the grain from warehousemen in Chicago, and that he had offered the warehouse receipts from these parties to the plaintiff. But his defense of agency was not suffered to defeat the recovery, it appearing that the whole transaction, though adroitly covered up with convenient entries and the intervention of suppositious go-betweens, was, after all, a mere wagering bargain, for a settlement of differences.

We have failed, however, to find in the record, any evidence to show that the plaintiff did purchase any stocks for Custer from other brokers or any other persons.

So far as the evidence shows, if any stocks were in fact purchased by Custer, they were bought from the plaintiff, and if any sales of stock were made on account of Custer, they were made by the plaintiff himself; and hence the question of agency does not properly arise in the case.

4th. That the ruling of the court was correct in its rejection of the defendant's prayer

has been earnestly argued on several grounds.

It is insisted that the instruction was faulty, because it denies the plaintiff's right to recover in case the jury should find that the parties did not intend *the stocks should be delivered to Custer*; whereas, it is argued, that the transactions might have been perfectly licit, notwithstanding it might have been the intention of the parties that the stock should not be *delivered to Custer himself*; as, for example, that it should be retained by the broker after purchase and placed in his strong-box for safe-keeping, until sold upon the owner's order.

The language of the instruction is to be considered in the light of the defenses pleaded in the trial, and which it was designed to present for the opinion of the court by the prayer.

If the defense to an action was *usury*, and that word were inserted in a prayer offered at the trial, it could scarcely be contended, on appeal, that the instruction was faulty because the word in one sense (and that its primary one) signified *legal* interest. In view of the character of the defense presented in such an action, it would be practically impossible that a jury of ordinary intelligence would so misunderstand the sense in which the word was used.

So, in the case at bar, no question was raised or hinted at as to the *manual reception* into Custer's possession of the stock; nor was there any point mooted as between its reception by Custer himself and its possession by *his agent*. Any such question would properly have been regarded as trivial and unimportant, since it is quite clear that if the plaintiff had made a *bona fide* purchase for Custer, under which the right of property was to pass to his principal, the reception of the property by the broker would have been properly regarded as the equivalent of its reception by Custer himself.

The real question for determination was as to the *bona fides* of the alleged purchases and sales; whether, in effecting such alleged purchases, any stock was actually obtained from the possession of any other person and transferred or communicated either to Custer personally or to his agent; and further, whether it was the intention of the plaintiff and Custer that the stock was to be obtained from the possession of any person and transferred to that of Custer or his agent, so that Custer would take title to what some one else parted with, or whether, on the other hand, it was their intention that there should be no such surrender of stock by any third person and no equivalent gain of such stock by Custer. And, with the view of presenting this idea of reception of

title or interest by the alleged buyer, the expression "*delivered to Custer*" was used, and in no other. A purchaser in London this morning, who *bona fide* has bought stocks by telegraph in New York, may correctly be said to have had them *delivered to him* to-day, as a mode of expressing the *bona fides* and completeness of the transaction, while the word would not be applicable to a stock-jobbing bargain concocted between two parties in New York, though sitting side by side in the Stock Exchange. In view of the pleadings and evidence in the case, it is inconceivable that the defendant's counsel could have thought of placing his case upon the point whether it was the intention of the parties that the stocks should be delivered to *Custer* rather than to *his broker*. The expression, "and that it was the intention of the said parties that such stocks should not be *delivered to the said Custer*," was the equivalent of saying, "and that it was the intention of said parties that such stocks should not *pass or become the property of Custer*."

The next member of the sentence is manifestly used in opposition to what just precedes it—"but that he should receive only the profits on the alleged purchases and sales;" and that opposite sense is only made apparent by rejecting the idea that the previous words "*delivered to said Custer*" only meant to imply the reception of the stock into his own manual possession.

The same expression was used in the sense we have ascribed to it, in several well considered cases.

Thus in 6 Bissell, *Ex parte Young*, p. 65, Judge Blodgett, of the Northern District of Illinois, in citing a decision in that State, says: "Judge Tree held that option contracts for grain, when the parties intended only to pay the differences, and not to *deliver the grain*, were void as wagering contracts." And the judge, in the principal case, in declaring void "*a put*" to deliver grain, which was the subject of controversy in that case, uses a similar expression: "The parties when they made the contract did not intend to *deliver the grain*, but only at the utmost to settle the differences." See, also, 7 Bissell, *In Re Green*, 344; 18 New York Sup. Ct., 11 Hunn., *Yerks v. Solomon*, 473; 89 Pa. State, 250, *North v. Phillip*; *Milchor v. Western Union Telegraph*, 11 Fed. Rep., 193.

And in the recent unreported case of *Roundtree v. Smith*, in the Supreme Court of the United States, the same expression is to be found, as descriptive of a genuine *bona fide* purchase and sale as opposed to a fictitious one. See also 11 C. B., 527, *Girzewood v. Blane*.

But even if the proposed construction had been considered faulty because of its supposed equivocal language, we cannot but regard it as an unfortunate omission that no instruction was given in lieu of that proposed. The question involved in the trial was one of great importance, sufficiently presented by the pleadings; and one which the courts have constantly held was for the determination of the jury; as was said in the case in 11 C. B., *Girzewood v. Blane*, in which the court left it to the jury to say what was the intention of the parties at the time of making the contract, and whether either party really meant to purchase or sell the shares; instructing them that if such intention did not exist, the contract was a gambling transaction and void.

By submitting the case to the jury without any instructions after rejecting the only one offered, they were left without guidance as to the law in a case novel in this jurisdiction, without instruction as to the proper application of the evidence; and, even without information of the important function expressly devolved upon them of passing upon the intention of the parties to the contract.

5th. It is further insisted that the instruction should have been refused, because there was no evidence in the case to sustain the supposal of the prayer.

It is not our province to decide as to the weight of the evidence and its sufficiency in fact to sustain the defendant's position, but only to determine whether the record discloses evidence sufficient in law to justify the granting of the instruction offered, or of one more explicitly stating the law. And after a careful examination of the proofs we are satisfied that there was evidence before the jury legally sufficient to be submitted for their consideration.

It is well settled that *the form* of the transaction is not conclusive. As was said by the court in 11 Hunn., before cited, it is not the form in which the trick or device is presented that avoids the contract, but *the intent* with which the scheme was planned. And in 7 Bissell, *Ex Parte Green*, the court say: "The fact that the parties charged the bankrupt with the price of the grain when he ordered it to be purchased, and credited him with the price it sold for when sold, cannot prove what the real transaction was. That only represents the form, not the nature of the transaction. It was as well to keep the account in that way when the real intention was to speculate in and pay only the differences, as when the sale was of the article itself."

It is in the light of these considerations that the testimony is to be examined.

The parties to this transaction were General Custer, an army officer, and Emil Justh and his partner Frank, Wall street brokers. General Custer is dead, having met his death bravely among the savage foes of the nation; and his testimony is absent. Of the survivors, Justh was examined in his own behalf in New York, but his testimony was introduced by the defendant after Justh had declined to read it to the jury. Frank is still employed in Justh's office in New York, but he was not examined. Justh produces two letters and a note from Custer which are the only statements we have from the deceased respecting the transaction. It seems to us impossible to read these papers without being impressed with the idea that they refer to an illicit business, with which Custer was rather ashamed to be connected. If the indebtedness which had accumulated within the preceding seven months had been the result of legitimate transactions, as of the actual purchase of stock or other property, or the loan of money, Custer would never have used such language as this: "I have acknowledged to you verbally and in writing that I am indebted to you, and should you deem it your interest to resort to law, I will certainly, if placed upon the stand, acknowledge the same fact in open court, &c." In the second letter he says: "The circumstances under which this debt was contracted render my obligation concerning it peculiarly binding, and I consider my honor pledged to effect the discharge of my indebtedness to you at the earliest date practicable."

Such language men use when speaking of the so-called "debts of honor," and not of their legitimate, ordinary money transactions.

The note of December, 1875, bears the same impress. It is in these words: "My dear Justh: If you will do so, would like you to put a stock order on P. at  $\frac{1}{4}$  below the opening price, and to sell one thousand L. S. with stop order  $\frac{3}{4}$  above opening price. If you do not feel disposed to do this please drop me a line, and send it here by messenger not connected with your office. Yours, G. A. C." The poor man showed more caution and strategy in this communication than he displayed in his last fatal campaign. Why should he ask Justh's permission or consent to sell the stock, if he was really ordering his own property to be sold; and why such secrecy, that required that the reply should be brought by a messenger not connected with Justh's office, unless he was engaged in a gambling stock transaction, which he was unwilling should be known?

And these writings are produced by the plaintiff himself. Justh, the only one of the

parties to the contract who was examined, is a broker of twenty years experience. It is most improbable that he was unacquainted with the state of the law upon this subject, for few classes of persons are more intelligent and shrewd about their business affairs than the New York brokers. He must have seen from the commencement of the cross-examination where the pinch of the case was, and that he could gain it, in all human probability, by making a straightforward answer to substantially the same question repeatedly propounded to him. For it would only have been necessary for him to swear that it was the intention of his firm and Custer, that the purchases and sales of stock were to be *bona fide* transactions instead of mere speculations or margins entered into without any intention that any property should be really bought or sold, or should change hands, and to support his statement by such accompanying proofs as would be readily forthcoming in any regular, honest transaction of purchase and sale, to secure the amount of his claim. But this answer he studiously and repeatedly refused to give, avoiding a direct reply in every form of subtle evasion.

Thus he was asked on cross-examination: "Was he, (Custer) a purchaser of stocks or securities for investment, or for the mere purpose of speculation with the intention that the profits only should be paid to him?"

Justh objects to the question, and then answers it in the words, "I do not."

Again: "Was that your understanding of the arrangement between you—that is, that you should execute orders for him in the purchase or sale of stocks, and that you should pay to him merely the profits accruing to him from these transactions, and that you should not in fact deliver to him the stocks purchased by you?"

A. "There was no arrangement whatever mentioned."

Q. "Was it not your intention in transacting this business to simply settle differences with General Custer, you paying him any profits in the transactions and he making good any losses?"

A. "Well, I had no intentions expressed or even spoken of. The nature of the business is such that customers have a right to ask for the money they have to their credit."

Q. "(Question repeated.) Was it your intention?"

A. "We had no intentions when we received any orders except to execute them. We can have no intentions. We only execute orders."

Q. "In what way did your transactions with

General Custer differ, if at all, from the ordinary transactions of brokers buying and selling for customers on a margin?"

A. "In no way.

And again—

Q. "When you entered into this business of buying and selling stocks for General Custer, had you yourself any intention to have the stocks paid for by General Custer and delivered to him?"

A. "Brokers have no intentions. I only execute orders, and when executed, the disposition of the stocks is made by the man who gives the order."

It is difficult to believe that such responses would have been made by a broker who had been engaged in *bona fide* purchases and sales of stocks, not denounced by the courts as illicit. Nor is it easy to understand what reason can be assigned why he did not promptly silence the charge of illegality by a straightforward story that could have been told in a single sentence, if the facts had existed to justify it.

What the broker does say in the progress of his cross-examination is equally significant.

He is asked:

Q. "Are you able to specify any case in which you bought stocks for the purpose of delivering them to General Custer?"

A. "Impossible. I did not know what his intentions were when he gave me an order."

Q. "What were your intentions?"

A. "To execute orders given, and to pay for them."

Q. "He was dealing on a margin, was he not?"

A. "Well, I trusted him, you know, naturally."

Q. "Is that the only answer you can make?"

A. "I trusted him, certainly."

He explains that the note from Custer of December, 1875, quoted above, was a "stop order;" which he defines to be a direction to the broker to buy and deliver stock if the market reached a certain point. He admits that he had dealt in "puts" and "sold stocks short" for Custer by his direction; and his testimony abounds throughout in similar expressions from the vernacular of the stock market, which would naturally be used in describing illicit purchases and sales upon margin.

The statements of the accounts are consistent with dealings of the same character.

The first transaction they refer to is under the date of May 17, 1875. On that day he charges Custer with "100 shares of L. S. stock," at a certain price, and with "commissions, \$12.75."

Under the same date he credits Custer

"by 100 shares L. S. stock," at a stated price, less "\$12.75 commissions."

Under the date of the 19th of May, there are similar entries of alleged purchases and sales and commissions. On this first venture Custer is represented as the gainer by \$183, and the broker's charges for buying and selling the same stocks amount to \$50.

During the six months of the speculation the profits credited to Custer amount to \$552, and the broker's commissions to \$1,840, and Custer's net losses are stated at \$8,578. The aggregate of the stock transactions during this period appears to have been \$389,983.

It appears that Custer was unable to pay the balance due in December, 1875, and the dividend paid from his estate in 1878 on the claim, would indicate that it could not pay more than ten cents on the dollar.

The disparity between the pecuniary ability of Custer and this immense amount of purchases and sale within half a year's time, would certainly be regarded by business men as a circumstance in contradiction of the idea that he intended to make actual contracts so much beyond his means of payment. In 7 Bissell, In Re Green, 344, the court, speaking of a transaction insignificant in comparison with this, says: "It is self-evident from the testimony and the condition of the parties that these sales were not *bona fide*. The bankrupt was not a dealer in grain. He was a country merchant of little or no means, and had no money to invest in wheat, which fact both Green, his brother, and Norris knew. The idea that they bought for him several thousand bushels of wheat with the expectation that he was to pay for it, was preposterous."

Much stress was laid upon the decision of the Supreme Court in the unreported case of Roundtree v. Smith, above referred to. In that case the court held that there was such an absence of all evidence that the transaction complained of was a gambling in stocks, that the court should not have submitted the question to the jury.

But the facts of that case were widely different from those in the case at bar. There the plaintiff, who was seeking to escape from liability, when asked what his intention was when he gave the particular orders—whether he designed an actual purchase or only a speculation in differences—answered: "I cannot say." And he admitted that he had on other occasions made *bona fide* purchases from the same broker about the same time. The other party to the contract, the broker, unequivocally testified that the transaction was in all respects a *bona fide* purchase and

sale; and the Supreme Court might well have held that there was a failure of evidence to sustain the plaintiff's contention.

In the case at bar, we cannot resist the conclusion that there was abundant evidence legally sufficient to go to the jury, in support of the supposal of the defendant's prayer; and believing that the instruction correctly stated the law, we think it was error to refuse it.

Judgment reversed and new trial awarded.

THE Maryland Court of Appeals in a late case (*Negley v. Farrow*), lays down one phase of the law of libel by newspapers, in clear cut terms: "The fact that one is the proprietor of a newspaper entitles him to no privilege, in this respect not possessed by the community in general. The law recognizes no duty, imposed on him arising from his relations to the public, to defame and libel the character of any one; and if he does, it is no answer to say he did so in good faith and without malice, believing it to be true. Malice in one sense may be said to be an essential element in an action for libel, but not malice in the ordinary senses of hatred or ill-will against the person of whom the defamatory words are spoken. If the publication be in itself libelous, the law in all such cases implies malice—in other words it says you have no right to libel another, whatever may have been the motive or intention."—*American Law Review*.

*Indorsee of Note secured by Mortgage—Act of Congress March 3d 1875, c. 137.*—When a promissory note, negotiable by the law merchant, is made by a citizen of one State to a citizen of the same State, and secured by a mortgage from the maker to the payee, an indorsee of the note can, since the act of March 3d 1875, c. 137 (1 Sup. Rev. Stat. 173), sue in the courts of the United States to foreclose the mortgage, and obtain a sale of the mortgaged property: *Tredway v. Sangar*, S. C. U. S., Oct. Term 1828.

THE Reporter (May 16, p. 635) tells us of a poor woman so injured by the sudden start of a street car that "she then lay insensible for some ten days in great suffering." No wonder that a Philadelphia jury gave her a \$12,000 verdict, nor that the Supreme Court allowed \$10,000 of that verdict to stand.

JUDGE HITCHER, of Mount Vernon, Ind., is the only surviving member of the first Indiana Legislature, which met sixty-seven years ago. He is 89 years old.

## Land Department.

Furnished by SICKELS & RANDALL.

Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

Practice.

HEIRS OF DANIEL TROY

vs,

SOUTHERN PACIFIC RAILROAD.

The decision of the appellate authority should be executed as directed.

The General Land Office has no authority to substitute some other relief for that granted by the Secretary of the Interior, even though the Commissioner may think the party would have been entitled, upon the record, to such relief, had he applied for it.

The defeated party is entitled to object to the substitution of a different relief for that granted by the superior authority.

DEPARTMENT OF THE INTERIOR,

WASHINGTON, D., C. June, 1883.

The Comm'r of the General Land Office:

SIR: I have examined the proceedings had by your office in the case of the Heirs of Daniel Troy v. Southern Pacific Railroad Company, subsequent to my decision therein, referred to in your letter of the 25th ultimo.

On the 28th day of February, 1881, the heirs aforesaid made application to purchase the land involved, under section 2 of the act of June 15, 1880. The defendant, the railroad company, resisted the application, claiming the land by virtue of its grant. The local officers rejected the application, but on appeal you granted it; and your decision in that respect was affirmed, on appeal to this Department, by decision of February 6th last, and the application to purchase under the provisions of said act was directed to be allowed.

You state that on February 14, 1883, you transmitted a copy of my decision to the local office, (Visalia, California) and directed that said heirs be allowed to purchase said land under the act aforesaid; that the next day the attorney for said heirs filed an application in your office to have the tract in question patented to Daniel Troy (deceased), under his homestead entry; and that on March 12, after a consideration of the facts, you revoked your letter of February 14th and instructed the Register and Receiver to issue supplemental final certificate, in the name of Daniel Troy, to cover the land in question; that final certificate was accordingly issued April 11th, and approved for patent April 23d, and that by letter of the latter date the attorney for said railroad company requested your

office to recall your said letter of March 12th and to require said heirs to purchase the land under the act of June 15, 1880, aforesaid.

You further state that on May 9th, you advised the attorney for said railroad company that, the claim of the company to said land having been concluded by the decision of this department, the question of the subsequent disposition of the land as between the heirs and the Government was one with which the company had nothing to do,

The attorney for the company having addressed a letter to this department, proceedings have been stayed by my direction until the questions thus raised could be determined.

It is claimed that the company has now no standing in the case, and that the action and motion on the part of the company should be dismissed.

The right of the company to be heard as to the execution of the final decision is evidently misapprehended by your office, and by the counsel for the heirs.

When the record is returned to your office from this Department, with its decision, and direction for the execution of such decision, it is in the nature of a remittitur in the law courts. Can there be any doubt about the right of a party, though defeated in the appellate tribunal, to see that the decree of that tribunal is executed as therein directed? And if the tribunal to which the record is remitted should attempt to execute the decree in a manner different from that ordered, or to substitute another remedy in place of it, would there be any doubt about the right of such party to move the superior tribunal to correct the proposed wrong execution of its decree?

The decisions of the appellate tribunal are of no avail unless they are to be executed as made. If the opposite party is not permitted to move in such tribunal, there is no one that would have that right, for all others would be strangers to the record. \* It would often happen that the defeated party would suffer from a wrong execution of the decree.

In the present case it may make no difference to the company whether the land in controversy passes to the heirs by virtue of a purchase or under an entry made by Daniel Troy in his lifetime. In another case the rights of the company, in respect to its land grant or the right to indemnity for the land lost by the particular decision, might be affected.

A party, although the judgment is against him, has a standing in the case and a right to be heard, until it is finally closed by an execution of the decree.

I must therefore decline to dismiss these proceedings, upon the ground that the defendant has no standing in the case.

From what has already been said it may be inferred that the practice of your office in this case cannot be approved.

The application was to purchase the land under the relief act already cited. The party making it was represented by able counsel, and presumed to know the relief desired and to which the party was entitled. The case was considered upon no other ground, and upon the record furnished by your office your decision was affirmed, and it was adjudged that the party was entitled to purchase under the act aforesaid.

You now direct, upon the same record, that the register and receiver issue a final certificate in the name of Daniel Troy, deceased, on his homestead entry made in 1867. That was not the remedy applied for, nor was it considered by you or this Department; and the defendant had not been heard upon that question. The record in this case may disclose sufficient facts to authorize the action now proposed by you; but after a case has been heard and decided, and a particular relief granted, your office is not at liberty to grant any relief or direct any action which you may think the party would have been entitled to upon the record if he had applied for it.

Such practice as is now proposed would lead to great confusion and uncertainty. This Department could not know whether the action directed by its decision was carried out, or some other action or remedy substituted in its place, except by instituting inquiry in your office. In this case the Department was not asked to modify its decision, and was in no way advised of the proposed change, until its attention was called to it by counsel for the defendant.

Your decision that the applicant had the right to purchase the land in question under said act, affirmed by me February 6th last, should be carried into effect; and your letter of March 12th, directing final certificate to issue under the homestead entry of Daniel Troy, and all proceedings subsequent, should be revoked.

Very respectfully,  
H. M. TELLER,  
Secretary.

THE American Bar Association will hold its next meeting at Saratoga Springs, the first session being on Wednesday, August 22d next.



## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

JULY 2, 1883.

William N. Dalton et ux. v. The B. & P. R. R. Co. Judgment of Special Term reversed and remanded for new trial.

John Campbell, adm'r, &c., v. Nathaniel Wilson. Judgment re-affirmed.

Rich & Bro. v. A. King Chandler. Marshal to return goods taken under execution.

John W. Bulkley v. James S. Edwards et al., adm'r, &c. Decree of Special Term reversed and bill dismissed.

John F. Talberg v. James E. Biller et al. Same. The Citizens' Nat. Bank v. Fanning et al. Decree of Special Term affirmed.

Henry E. Davis, adm'r, &c., v. John J. Key. Bill dismissed and appeal allowed to S. C. U. S.

JULY 3, 1883.

Geo. M. Miller v. The B. & P. R. R. Co. Judgment of Special Term reversed and cause remanded for new trial.

Geo. A. Armes v. Otis Bigelow et ux. Rule discharged.

John Campbell v. Nathaniel Wilson. Balance of deposit to be refunded to the plaintiff.

Emil S. Friederick v. Charles Christiani et al., trustees. Decree of Special Term reversed and bill dismissed.

Rich & Bro., use of N. H. Miller, v. A. King Chandler. Order of July 2nd, 1883, vacated.

The U. S. v. Wm. Lilley. Substitution of administrator ordered.

G. L. Scarborough, Richard B. Porter, John W. Phillips, and John Hancock were admitted to practice. On George C. Payne arriving at full age he will be admitted.

JULY 6, 1883.

Thomas B. Stahl appointed constable.

Emil S. Friederick v. Charles Christiani et al., trustees. Prayers of complainant overruled.

U. S., ex rel. Alonzo J. Marsh, executor, &c., v. Henry M. Teller, Secretary of the Interior, et al. Rule to show cause why writ of mandamus should not issue.

### EQUITY COURT.—Justice James.

JUNE 21, 1883.

Middleton v. Middleton. Sale ordered and trustees to sell.

Bomar v. Bomar. Appearance of absent defendant ordered.

Murphy v. Washington. Leave to certain parties to become parties complainant.

Moore v. Harrison. Referred to special auditor.

Worthington v. Reed. Same.

JUNE 22, 1883.

Jackson v. Blackwood. Sale ratified nisi.

Elsinger v. Uhermehle. Time limited to take testimony.

Craig v. Craig. Referred to auditor.

Pitts v. Pitts. Testimony before examiner ordered.

Bell v. Wilkinson. Pro confesso against defendant Wilkinson. Sale ordered and trustees to sell.

Byrne v. Byrne. Alimony awarded.

Sullivan v. Carrico. Restraining order granted.

Gordon v. Fant. Gordon authorized to receive and disburse interest.

Notte v. Notte. Testimony before examiner ordered.

JUNE 23, 1883.

Ward v. Ward. Auditor's report confirmed. Dallas v. Dallas. Order appointing guardian rescinded.

Roys v. Roys. Defendant required to answer.

JUNE 25, 1883.

Hay v. Kirk. Appearance of absent defendant ordered.

Stirges v. Holladay. Decree amended.

Lazenby v. Lazenby. Auditor's report confirmed.

Clark v. Seibert. Sale confirmed and reference to auditor.

Penn v. Walsh. Sale ordered and trustees to sell.

Taylor v. Ryan. Creditors allowed to file petition.

In re Wm. H. Zepp, lunatic. Referred to auditor.

Murphy v. Unknown Heirs of George Washington. Appearance of absent heirs ordered. Receiver appointed.

JUNE 26, 1883.

Yeabower v. Kengla. Sale finally ratified and referred to auditor.

Groot v. Hltz. Approval of investment.

Holmes v. Holmes. Divorce a vin. mat. granted.

Gelston v. Gelston. Amendment of return and decree ordered.

Ourand v. Ourand. Sale finally ratified and referred to auditor.

Marks v. Main. Pro confesso against defendant Main.

Bright v. Nottingham. Guardian ad litem appointed.

JUNE 27, 1883.

Dallas v. Dallas. Guardian ad litem appointed. Follin v. Golden. Trustee authorized to perfect title.

Marks v. Main. Pro confesso against Main set aside.

Middleton v. Middleton. Pro confesso against Dant ordered.

Campbell v. Leitcher. Removal of cloud from title ordered.

JUNE 28, 1883.

Rowles v. Rowles. Submitted.

Spear v. Coyle. Sale ratified nisi and referred to auditor.

Cornelius v. DeVaughn. Sale ordered and trustees to sell.

In re Skippen, on petition of committee of lunacy. Leave of committee to join in conveyance.

Frank v. Young. Appearance of absent defendant ordered. Pro confesso against Young.

Dallas v. Dallas. Proof ordered taken before examiner.

### CIRCUIT COURT.—Justice Mac Arthur.

JUNE 16, 1883.

Hipp v. Phelz. Motion for judgment granted.

Kingley v. Wiseman. Same.

Grayson & Cain v. Schooler. Motion for judgment overruled.

McBride v. Fletcher. Motion for new trial overruled.

Edmondson & Son v. Gilbert. Motion to take deposition overruled.

Wash. Market Co. v. Beckley's adm'r. Time to join issue.

Crandall's adm'r v. District of Columbia. Motion for new trial overruled.

#### CRIMINAL COURT.—Justice Wylie.

JUNE 19, 1883.

U. S. v. Patrick McCann. Receiving stolen property. Plead guilty. Sentenced to pay to the U. S. \$30.

U. S. v. Wm. Batchlor, &c. Larceny from the person. Plead guilty. Sentenced to penitentiary for one year.

U. S. v. Arthur Bruce. Larceny. Plead guilty. Sentenced to penitentiary for two years.

JUNE 20, 1883.

U. S. v. Patrick Sullivan. Information for assault. Verdict guilty. Fined \$5 and costs.

JUNE 22, 1883.

U. S. v. Charles J. Baur. Information for assault. Verdict not guilty.

U. S. v. Jacob Levi and Simon Levi. Information for assault. Verdict not guilty.

U. S. v. Americus Murray. Information for bawdy house. Verdict guilty. Sentenced to pay \$100 or three months in jail.

U. S. v. Geo. Hawkins. Second offense petit larceny. Verdict guilty. Sentenced to penitentiary for three years.

U. S. v. Jennie Wood. Information for larceny. Verdict not guilty.

U. S. v. James T. Carberry. Information for receiving stolen property. Nolle pros.

U. S. v. Elizabeth Brown, &c. Larceny. Jury disagreed.

JUNE 25, 1883.

U. S. v. Albert E. Boone et al. Conspiracy. Nolle pros.

U. S. v. Albert E. Boone. Subornation of perjury. Nolle pros.

U. S. v. Albert Foreman and Andrew Harris. Assault with intent to kill. Verdict guilty.

U. S. v. Alice Pritchard. Information for larceny. Verdict guilty. Sentenced to jail for six months.

U. S. v. Henry Prior. Larceny. Verdict guilty. Sentenced to penitentiary for three years.

U. S. v. Rosa Johnson. Larceny. Verdict guilty. Sentenced to penitentiary for one year.

JUNE 26, 1883.

U. S. v. Andrew Harris. Assault with intent to kill. Motion for new trial.

U. S. v. Wm. Foreman. Same.

U. S. v. Olmstead Ward, &c., et al. Indicted for the murder of Joseph Creek. Verdict not guilty as to Alfred Warren, Joseph Marshal and Washington Curry, and guilty of manslaughter as to Olmstead Ward.

U. S. v. Sephrona Ward. Larceny. Verdict guilty. Sentenced to penitentiary for 18 months.

JUNE 30, 1883.

U. S. v. Thomas Dunn. Indicted for larceny. Four cases. Defendant pleads in abatement.

U. S. v. Geo. O. Miller. Indicted for receiving stolen property. Two cases. Defendant moved to quash.

U. S. v. Geo. O. Miller. Indicted for larceny. Same motion.

U. S. v. Geo. O. Miller. Indicted for misconduct in office. Same motion.

U. S. v. Geo. O. Miller. Indicted for violation of Sec. 357 R. S. D. C. Same motion.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

JUNE 25, 1883.

24568. Charles A. James v. Robert S. Davis et al. Note, \$532. Pliffs atty, W. F. Mattingly.

24569. Harriet A. B. Corts v. The District of Columbia. Damages, \$20,000. Pliffs attys, Farnsworth and Coleman.

JUNE 29, 1883.

24570. Mary D. Gouverneur, executor, v. John H. Rice, administrator. Bond, \$40,000. Pliffs atty, James Lowndes.

24571. John J. Shipman v. Jonathan Magarity. Account, \$4,000. Pliffs atty, W. Willoughby.

24572. P. H. Christman v. Bridget Tuohy et al. Judgment of Justice Hall, \$25. Pliffs attys, Edwards & Barnard.

24573. Same v. Same. Judgment of Justice Hall. Pliffs attys, same.

24574. John T. Given, administrator, v. Matthew Goddard. Account, \$1,800. Pliffs attys, Appleby & Edmonston.

24575. William Berger v. Henry Conradis. Judgment of Justice Mills, \$35.66.

24576. Mary A. Gibbons v. Rosen Parry. Notes, \$225. Pliffs atty, D. O'Connell.

JUNE 30, 1883.

24577. Richard A. Shacklette v. John B. Olcott. Replevin. Pliffs atty, F. W. Jones.

24578. Mary A. Smith v. Warner Waddy. Appeal. Pliffs atty, E. A. Newman.

24579. Arthur Flynn v. John O. Jones. Certiorari, Defts atty, A. K. Browne.

24580. Joseph Yerby v. Charles W. M. Hubbell. Replevin. Pliffs atty, A. O. Richards.

24581. United States, ex rel Francis Carter, v. The Commissioners of the District of Columbia. Mandamus. Pliffs atty, H. H. Wells, jr.

JULY 2, 1883.

24582. Charles H. Knight v. Whitfield Jackson. Judgment of Justice Richards, \$35.

JULY 3, 1883.

24583. Lewis Chrismon v. George Nicholson. Certiorari. Defts atty, John E. McNally.

JULY 5, 1883.

24584. Lydia E. Dupler et al. v. Columbus W. Thorn. Damages, \$50,000. Pliffs atty, P. P.

JULY 6, 1883.

24585. Alfred C. Gibson et al. v. John H. Clark. For judgment. Account, \$773 15. Pliffs attys, Ross & Dean.

24586. The United States ex rel. Alonzo J. Marsh administrator, v. Henry M. Teller et al. Mandamus. Pliffs atty, L. H. Pike.

24587. Mary E. Godey v. Henry Conradis. Account, \$261.01. Pliffs atty, F. W. Jones.

24588. Isabella Dupler v. Ross & Dean, attorneys. Damages, \$100,000. Pliffs atty, P. P.

#### IN EQUITY.—New Suits.

JUNE 25, 1883.

8620. John W. Boswell v. Sarah J. Boswell. For divorce. Com. sol., W. B. Barton.

8621. William E. White v. Robert H. White et al. For conveyance. Com. sol., R. P. Jackson.

JUNE 29, 1883.

8622. Hattie F. Coombs v. Charles C. Coombs. For divorce. Com. sols., Stone and Bailey.

8623. John Hockemeyer et al. v. Leopold Newmeyer et al. To construe will. Com. sols., W. O. Stone and F. W. Jones.

8624. Thomas N. Adams et al. v. Robert S. Cooper et al. To substitute trustee. Com. sol., J. A. Johnston.

JULY 3, 1883.

8625. Martin V. B. Hoffman et al. v. Laurence Callan et al. For trustee and sale. Com. sol., E. F. Leighton.

8626. Margaret E. Michel v. William F. Michel. For divorce. Com. sol., Samuel Fugitt.

8627. Rose McKenney v. James McKenney. For divorce. Com. sol., A. B. Williams.

JULY 5, 1883.

8628. J. P. Jordan v. Lizzie B. Jordan. For divorce. Com. sols., Richards and Pelham.

8629. William C. Bamberger v. The Baltimore and Potomac R.R. Co. Injunction. Com. sols., Hagner & Maddox.

8630. Arthur A. Birney et al. v. James Robbins et al. For partition. Com. sol., A. A. Birney.

#### PROBATE COURT.—Justice James.

JUNE 12, 1883.

Will of John E. Gorman; filed for probate and proved by two witnesses.

Will of Michael Reuter; filed with petition of executor; order of publication.

James W. Gray, guardian; completed bonds.

**JUNE 13, 1883.**  
Estate of Hayward M. Hutchinson; citations served and acknowledged.

Will of Emily Johnson; proved by second witness.  
Estate of Caroline E. Birt; appraisers appointed.  
Estate of Catharine Brown; bond of executor signed by one surety.

**JUNE 14, 1883.**  
Estate of Lewis R. Taylor; inventory returned by administrator.

Will of George A. Morrison; filed for probate with renunciation of executor.  
Estate of Caroline E. Birt; inventory of personalty returned by one of the executors.

In re will of Catharine Brown; validity of will established by jury of circuit court.  
Will of Noble Young; commission partially executed by testimony of two witnesses.

Estate of Geo. Clymer; receipt of distributees filed.  
Daniel Murray, guardian; letter relative to account filed.  
Estate of Catharine Brown; bond of executor completed and letters issued.

**JUNE 15, 1883.**  
Will of John E. Gorman; fully proved and admitted to probate.

Will of Cornelius Cohan; filed for probate.  
Will and codicil of Wm. Y. Deneale; filed for probate with petition of widow.

Will of Wm. H. Herbert; proved by two witnesses.  
Estate of William Barnes; citation against son returned served.

In re John R. Brown; for appointment as guardian.  
Estate of Virginia Taylor; objection to petition filed.  
Estate of John G. Killian; proof of publication filed and will fully proved.

Estate of Jacob L. Dorwart; proof of publication filed and will proved by two witnesses.

Estate of George A. Morrison; commission issued to take depositions of witness to will.

Estate of Belinda Kondrup; petition for probate of will letters issued, partly bonded.

Estate of George Washington; inventory returned by administrator.

In re Johan O. Kondrup et al.; petition for guardianship.  
In re estate of John W. Scott; will admitted to probate; letters issued and executrix bonded and qualified.

Estate of John B. Castell; final notice to administrator for settlement.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Tullock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

SEYMOUR W. TULLOCK, Administrator. 27-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel T. Ellis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

LENORA A. ELLIS, Administratrix. 27-3  
EDWARDS & BARNARD, Solicitors.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jacob L. Dorwart, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

SUSAN D. DORWART, Executrix. 27-3  
VORHEES & SINGLETON, Solicitors.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward E. Anderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

WILLIAM S. ANDERSON, Executor. 27-3  
E. D. WRIGHT, Solicitor.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Thompson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883.

WILLIAM MIDDLETON, Executor. 27-3  
RICHARD P. EVANS, Solicitor.

#### THIS IS TO GIVE NOTICE.

That the subscribers, of Yonkers, N. Y., Raccoon, West Virginia, and Sacketts Harbor, N. Y., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of June, 1883.

F. NEMEGYI,  
ALEXANDER STRASZ,  
HARRY C. EGBERT, 27-3  
J. J. DARLINGTON, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** Sitting as an Orphans' Court for the said District, the 2d day of July, A. D. 1883. Hagner, J.

In re estate of Margaret Adams  
Upon reading the foregoing petition of Benjamin P. Snyder, it is ordered, that Samuel Adams, Elizabeth Mulloy, Samuel Mulloy, Eliza Arnold, William L. Arnold, George Adams, Margaret Adams and Lydia, otherwise called Eliza Ann Adams, show cause on or before the 29th day of September, A. D. 1883, why the last will and testament of the said Margaret Adams, propounded for probate by the said Benjamin P. Snyder, who is named as executor therein, should not be admitted to probate and why Letters Testamentary should not be issued to him thereon. Provided, that a certified copy of this order be published once a week for three successive weeks prior to the said 29th day of September.

By the Court. A. B. HAGNER, Asso Justice.  
A true copy. Test: H. J. RAMSDALL,  
27-3 Register of Wills, D. C.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** the 2d day of July, 1883.

FRANK L. BEACH } No. 8464. Eq. Doc., 22.  
v.  
COLUMBUS BEACH ET AL.

On motion of the complainant, by Mr. R. K. Elliot, Esq., his solicitor, it is ordered that the defendant, Mary Ann Lane, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 27-3 E. J. MAUGH, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** the day of July, 1883.

MOLLIE B. REITER } No. 8,614 Eq. Doc. 23.  
v.  
JOHN H. REITER.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, John H. Reiter, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 27-3 E. J. MAUGH, Clerk.

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**SPEER ET AL. } No. 8,412. Equity.**  
**COYLE ET AL. }**

The trustee, Andrew O. Bradley, having reported that he has sold the real estate in the proceedings described to wit, lot No. 11, in square No. 461, in the city of Washington, D. C., to Frank P. May, for \$18,000; it is, by the court this 28th day of June, 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

By the Court. **CHARLES P. JAMES, Justice.**  
 A true copy. Test: 27-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of July, 1883.**

**BENJAMIN K. PLAIN, trading and doing business under the firm name and style of B. K. Plain & Co., Plaintiff.**  
**No. 24,568. At Law.**

**MELVILLE S. NICHOLS, trading and doing business under the firm name and style of M. S. Nichols & Co., Defendant.**

On motion of the plaintiff, by Mr. E. A. Newman, his attorney, it is ordered that the defendant, Melville S. Nichols, trading and doing business under the firm name and style of M. S. Nichols & Co., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **MAC ARTHUR, Justice.**  
 True copy. Test: 27-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry A. Jackson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of December, 1883, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.  
 27-3 **ROBERT J. DOUGLASS, Administrator.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 6, 1883.**

In the matter of the Estate of John Coyne, late of Soldiers' Home, D. C., deceased

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Patrick J. Durkin, (letters to issue to Benjamin F. Rittenhouse, Major, U. S. A.)

All persons interested are hereby notified to appear in this court on Friday, the 27th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: **CHARLES P. JAMES, Justice.**  
 Test: **H. J. RAMSDELL, Register of Wills.**  
**GORDON & GORDON, Solicitors.** 27-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 6, 1883.**

In the matter of the Will of Daphne Hungerford, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan Pierce, (Howard Pierce, executor.)

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
 Test: **H. J. RAMSDELL, Register of Wills.**  
**EDWARD D. WRIGHT, Solicitor.** 27-3

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of July, 1883.**

**HOOD, BONBRIGHT & Co. } No. 24,522. At Law.**

**JOHN LEONARD.**

On motion of the plaintiffs, by Messrs. Ross & Dean, their attorneys, it is ordered that the defendant, John Leonard, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Asso. Justice.**  
 A true copy. Test: 27-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the day of July, 1883.**

**ANTON REMY } No. 8647. Equity Docket 23.**

**CLARA REMY.**

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Clara Remy, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 27-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of George A. Morrison, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1883.  
**FRANCIS W. EDWARDS,**  
 1557 14th street, northwest.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Administration on the personal estate of Charles Draeger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.  
**MARY DEAEGER, Administratrix.**

**JOSEPH FORREST, Solicitor.** 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 15th day of June, 1883.**

**MICHAEL JOACHIM, EXECUTOR OF LOUISA JOACHIM } No. 24,523. Law Doc.**

**JOHN O. JOACHIM.**

On motion of the plaintiff, by Messrs. Crittenden & Mackey, her solicitors, it is ordered that the defendant, John O. Joachim, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. **MAC ARTHUR, Justice.**  
 True copy. Test: 26-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**ROBERT COHEN } No. 7,862. Equity Docket 21.**

**J. H. COHEN ET AL.**

Andrew B. Duvall and Henry E. Davis, trustees, having reported to the court the following sales of the real estate in the proceedings mentioned, viz.: said part of lot five, in square four hundred and sixty-one, to Robert Cohen, for \$18,005; the north 24 feet front by depth of lot nine, in square seven hundred and eighty-five, to Ignatius Miller, for \$2,975; the south part of said lot to Albert M. Read, for \$672 37; and said sub-lot twenty-four, in square three hundred and fifty-eight, to Ellen O. Toomey, for \$762 51; and that said Cohen and Miller, desire to pay all cash for their respective purchases; it is, by the court, this 19th day of June, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed on the 19th day of July, 1883, unless cause to the contrary thereof be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said last named day.

By the Court. **CHAS. P. JAMES, Justice.**  
 Test: 26-3 **H. J. RAMSDELL, Register of Wills.**

*Legal Notice.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of June, 1883.**

EDWIN B. HAY ET AL.

No. 5611. Eq. Doc. 23.

GEORGE E. KIRK, TRUSTEE, ET AL. }  
On motion of the plaintiffs, by Mr. Edwin B. Hay, their solicitor, it is ordered that the defendant, George Rufus Zell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.  
A true copy.

CHAS. P. JAMES, Justice.  
Test: 26-3 R. J. MEIGS, Clerk

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Cross, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1883.

26-3

WILLIAM B. LAPHAM,  
Room 82½ Interior Department.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John G. Killian, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1883.

26-3 REGINALD FENDALL, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Belinda Kondrup, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1883.

AUGUST PETERSEN, Executor.  
CARUSI & MILLER, Solicitors. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of William Lilley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1883.

FREDERICK B. LILLEY, Administrator c. t. a.  
CRITTENDEN & MACKAY, Solicitors. 26-6

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity.**

JAMES L. BARBOUR, Admr'.

OWEN LEDDY.

No. 7,619. In Equity.

Consolidated with

CATHERINE LEDDY

No. 7,961. In Equity.

MICHAEL LEDDY ET AL.

On consideration of the trustees' report of sales made of the real estate of Owen Leddy, jr., deceased, it is this 15th day of June, A. D. 1883, ordered, adjudged and decreed, that the sales be and the same are hereby ratified unless cause to the contrary thereof be shown on or before the 18th day of July, A. D. 1883. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the City of Washington, D. C., once a week for three successive weeks before the said 18th day of July.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 26-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of June, 1883.

LUCINDA H. SCOTT, Executrix.  
EDMUND A. BAILEY, Solicitor. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James Sayers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

26-3 MARGARET SAYERS, Executrix.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ELLIDA J. MIDDLETON, Executrix.  
H. T. TAGGART, Solicitor. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Michael H. Homiller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

MARY JANE HOMILLER, Administratrix.  
HINE & THOMAS, Solicitors. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Barnes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1883.

SARAH A. L. BARNES, Administratrix.  
DANIEL O'C. O'ALLAGHAN, Solicitor. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anthony M. Dutch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

MARY A. DUTCH, Executrix.  
H. T. WISWALL, Solicitor. 26-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 3806, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate (which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 23th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate; to wit: part lot No. 82, to secure the payment of \$600 to Robert E. Frey, as Treasurer of 12th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington deceased, was granted unto Charles E. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test:

R. J. MEIGS, Clerk.

26-6

By M. A. CLANOEY, Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court business. June 23, 1883.**

In the matter of the Will of Cornelius Cohan, alias Cornelius Crowley, late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Catharine Kearns.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of July next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and Letters Testamentary on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHAS. P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

R. E. CRAWFORD, Solicitor.

25-8

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

BERNARD L. JACKSON ET AL.

No. 5,960. Equity.

ELI S. BLACKWOOD ET AL.

Mablon Ashford and Job Barnard, trustees herein, having reported a sale of lot 49, of Augustus Davis' subdivision of original lot numbered 8, in square numbered 513, in Washington City, in the District of Columbia, to Samuel T. Williams, for \$6,000:

It is, this 23d day of June, 1883, Ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 22d day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

EDWARDS & BARNARD, Solicitors.

25-3

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Ezekiel Hughes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1883.

26-3 CHAS. H. ORIGIN, Jr., Administrator c. t. a.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah W. Farris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1883.

SAMUEL B. FARRIS, Executor.

CHAS. S. WHITMAN, Solicitor.

25-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George Alcorn, late of Howard Co., Maryland, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

WILLIAM E. LINN, Administrator.

WILLIAM E. LINN, Attorney at law,

1338 High street,

Georgetown, D. C.

26-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Sitting in Equity.**

THEODORE B. CROWE

v.

JOSEPH W. BOUCHER ET AL.

No. 3605. Eq. Dec. 13.

On reading report of sale of real estate of the late Alfred H. Boucher, this day filed by Messrs. R. P. Jackson and William A. Meloy, trustees:

It is ordered, this 15th day of June, A. D. 1883, that said sale be ratified and confirmed unless cause to the contrary be shown to this court on or before the 16th day of July, next. Provided, a copy of this order be published for three weeks prior thereto in the Washington Law Reporter.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 25-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hayward M. Hutchinson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1883.

ELIZA C. HUTCHINSON, Executrix.

WM. B. WEBB, Solicitor.

25-3

**THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John W. Hagan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883.

SAM'L E. BOND, Administrator.

25-8

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of June, 1883.**

JULIA B. BOMAR

No. 8,533. Eq. Doc. 23.

v. ROBERT H. BOMAR.

On motion of the plaintiff, by Mr. Carpenter, her solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 25-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Esner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ANDREW J. BIEDLER, Executor.

EDWARDS &amp; BARNARD, Solicitors. 24-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Andrew Rothwell, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscribers, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of June, 1883.

GEORGE L. SHERIFF,  
ALMARIN C. RICHARDS,  
Executors.

24-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Louise Wagner, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

HENRY WAGNER, Executor.

CHAS. A. WALTER, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 12, 1883.**

In the matter of the Will of Michael Reuter, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles Walter.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. June 15, 1883.**

In the case of Joseph F. Hodgson, Administrator of John B. Castell, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 6th day of July A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting in Equity. June 13, 1883.**

EDWARD TEMPLE ET AL.

No. 7767. Eq. Doc. 21.

v. CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot numbered five [5], in square numbered six hundred and forty [640], to Charles H. Parker, for \$197.10; lot numbered eight [8], in square numbered six hundred and forty two [642], for \$180, to Charles H. Parker; all of square numbered six hundred and forty five [645], to J. Harrison Johnson, O. T. Thompson and Edward L. Wright, for \$4,731.45; lot numbered two [2], in square numbered one thousand and eleven [1,011], to Doretta F. Talcott, for \$466.60; lot numbered eight [8], in square numbered one thousand and seventy [1,070], to Aug. Burgdorf, for \$132.48; lots numbered nine [9], ten [10], eleven [11], twelve [12], thirteen [13] and fourteen [14], in square numbered one hundred and twenty-eight [128], to Aug. Burgdorf, for \$2,000; south one-half [1/2], of lot numbered ten [10], in square numbered twenty-eight [28], to Aug. Burgdorf, for \$250; lots numbered two and three [2 and 3], in square numbered twenty [20], for \$115; lot numbered nineteen [19], in square numbered six hundred and eight [608], for \$50, to Aug. Burgdorf; lots numbered two [2] and fourteen [14], in square numbered one thousand and ninety-five [1,095], and lots numbered five [5] and six [6], in square numbered one thousand and ninety-six [1,096], and the south forty [40] feet front of lot numbered one [1], and all of lot numbered seventeen [17], in square numbered one thousand and ninety-seven [1,097], to Aug. Burgdorf, for \$466.39; it is this 13th day of June A. D. 1883, ordered, that said sales be ratified and confirmed unless cause to the contrary thereof be shown on or before the 15th day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 15th day of July, A. D. 1883.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 24-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. June 16, 1883.**

In the matter of the estate of John W. Starr, late of the said District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah M. Starr.

All persons interested are hereby notified to appear in this court on Friday, the 15th day of July, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: 24-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Samuel O. Raub, Executor, of George N. Hopkins, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 15th day of July, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

Wm. T. JOHNSON, Solicitor. 24-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

EMMA J. WININGDEE, Guardian

No. 8557. Eq. Doc., 23

v. WILLIAM B. DOUGHERTY.

Upon hearing the report of Thomas W. Fowler, trustee, showing the sale of lot seventy-five (75), in square 120, at the price of thirty-two cents per square foot, it is, this 15th day of June, 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 15th day of July, 1883. Provided, that a copy of this order be published in the Law Reporter once a week for three weeks before said day.

By the Court. CHAS. P. JAMES, Justice.

True copy. 24-3 Test: R. J. MEIGS, Clerk.



# Washington Law Reporter

WASHINGTON - - - - - July 14, 1888.

GEORGE B. CORKHILL - - - EDITOR

THE Supreme Court of the United States, recently, in the case of *Kring v. The State of Missouri*, and the Supreme Court of Colorado in the case of *Garvey v. The People*, have laid down the proposition that a law enacted after the commission of a crime which alters the situation of one accused of a crime to his disadvantage is *ex post facto* and void.

In the case of *Kring*, the accused was indicted for murder, and upon his plea of guilty was convicted of murder in the second degree, and sentenced to twenty-five years imprisonment. He appealed and the judgment was reversed. By the law of Missouri in force at the time when the homicide was committed, this conviction was an acquittal of the charge of murder in the first degree; but the law was subsequently so changed by an amendment to the State constitution that when a judgment on a plea of guilty was set aside, it should not operate as an acquittal of the higher crime. He was subsequently tried several times before a jury, his plea having been set aside by the trial court, and a plea of not guilty entered by order of the court; and upon the last trial he was convicted of murder in the first degree and sentenced to be hanged. This judgment was affirmed by the Supreme Court of the State, which held that the change in the law having been effected before the plea and judgment of guilty of murder in the second degree were entered, and as the new law was in force when the conviction on that plea was had, its effect as to future trials must be governed by that law; that the change was not a change in crimes but in criminal procedure, and that such a change was not *ex post facto*. Justice Miller, delivering the opinion of the Supreme Court of the United States, however, said that no substantial right which the law gave the defendant at the time to which his guilt relates could be taken away from him by *ex post facto* legislation because

it was called, in modern phrase, a law of procedure; and that "whatever may be the essential nature of the change, it is one which to the defendant involves the difference between life and death, and the retroactive character of the change cannot be denied;" that the provision of the State constitution above referred to as to this case, was an *ex post facto* law within the meaning of the constitution of the United States; and the judgment was reversed.

In the Colorado case the defendant was indicted at March Term, 1881, of the county court, for murder, alleged to have been committed on May 23, 1880; when brought to trial, he pleaded not guilty, a verdict of "guilty as charged in the indictment" was rendered and he was sentenced to imprisonment for life. The points relied upon in error were, that as the law of the State stood prior to 1870, there was but one grade of murder, for which the punishment was hanging; that in 1870, the law was amended, that thereafter the former law should be construed so that the death penalty should not be ordered by the courts unless the jury should indicate in their verdict of guilty that the killing was wilful and premeditated, &c.; that where a verdict was rendered without such indication the sentence should be imprisonment during the defendant's natural life; that the law thus remained until March 1, 1881, when the law of 1870, was repealed, and in lieu thereof it was enacted that the death penalty should not be inflicted unless the jury in their verdict of guilty should indicate that the killing was deliberate and premeditated, &c.; or unless the jury in case the defendant pleaded guilty, should indicate that the killing was deliberate and premeditated, &c., and that in case of such plea, that question and no other should be submitted to them, and that thereafter any person found guilty of the crime of murder by his plea or by the verdict of a jury where a trial was had without a confession in such plea, or indication in such verdict whether the killing was deliberate and premeditated, &c., should be sentenced to confinement for his natural life, and it was urged that under the law as it existed at the time of the com-



mission of the offense, the prisoner had the right to plead guilty and thus avoid the hazard of a death sentence, and that the law of 1881, had the effect to change the rule of evidence and to increase the punishment to the disadvantage of the defendant, and deprive him of this privilege except at the risk of having the death sentence inflicted.

The court, through Beck, C. J., after citing the case of Kring and other authorities, held that applying the principles announced by them, the act of 1881 had changed the law to the disadvantage of those indicted for murder previously committed; that by said act the law of 1870 was repealed without a saving clause, and that there could therefore be no conviction under the repealed law, and that all that remained unrepealed of the law of homicide were the original provisions for one grade of murder to be punished by hanging; and that "it was clear that the accused could not be convicted of murder under these provisions alone, since the punishment for that offence had been changed from imprisonment or death, as the proofs may warrant, to death only—an increase of the punishment which made the law obnoxious to the constitutional inhibition."

*Criminal Procedure—Continuance of Trial through Legal Holiday—Discretion.* A statute of the State made February 22d, the birthday of Washington, a public holiday, and prescribed that no public business, except in case of necessity, should be transacted on that day. The defendant was indicted for murder, and his trial was continued through the 22d of February, a verdict being rendered on the 23d inst. *Held*, that the trial judge was necessarily the judge of the necessity for continuing the trial, and that such a continuance did not constitute a mistrial. *State v. Sorenson*. (District Court of Ramsey County, Minnesota. May 23, 1883.)

*Seduction—Action by Father—Loss of Service.* In an action by a father for the seduction of his daughter (a minor), the gist of the action is the loss of the service of the child, and in the absence of the proof of such loss there can be no recovery. *Ogborn v. Francis*. (Supreme Court of New Jersey. November Term, 1882.)

## Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKER.

HORACE STILES

vs.

FREDERICK SELINGER.

AT LAW. No. 23,789.

{ Decided May 14, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and COX sitting.

1. An action for goods bargained and sold is not sustained by proof that the goods were pledged and that the pledgee sold them and appropriated the money to his own use.
2. The proper remedy is an action of trover to recover the goods or their value, or assumption for money had and received, but in the latter case the pledgor would be entitled only to the amount received for the goods by the pledgee less the amount advanced with interest thereon.
3. The rights and liabilities of pledgor and pledgee in a case of alleged forfeiture of the pledge incidentally considered.

THE CASE is stated in the opinion.

WM. H. BROWNE and J. J. WILMARTH for plaintiff.

T. F. MILLER for defendant.

Mr. Justice Cox delivered the opinion of the court.

This case was submitted to us on briefs. The action was brought in the first instance before a justice of the peace, removed on certiorari to this court, tried at the Special Term and brought here upon a motion for a new trial on exceptions. The facts are, that a gentleman named Stiles, a lawyer, deposited 44 volumes of Wisconsin Reports with Frederick Selinger, a licensed pawnbroker, as security for a loan of \$26, and received from him on the 3d of January, 1882, a pawn ticket for one month, stating that the pledge must be redeemed or the ticket renewed on or before the 3d of February, or the articles pledged would be forfeited. By an act of the legislative assembly, it is provided that, upon default of payment of any debt secured by a pledge in this way, the pawnbroker shall be at liberty, three months from the date of the forfeiture, to sell the property, after having duly advertised it for sale in the two papers of the largest circulation in this District. Therefore the time within which the pledge could be redeemed would expire on the 3d day of May, 1882; but, instead of waiting for that time, the pawnbroker, on the 29th of April advertised to sell certain forfeited pledges in the form following:

"FOLEY, Auctioneer.

"*Auction Sale of Forfeited Pledges.*

"I will sell for F. Selinger, at 737 7th street, n. w., commencing Saturday, April 29, 1882. This sale will consist of ladies' and gents' gold and silver watches, jewelry, clothing, boots, shoes, books, guns, revolvers, plated ware, &c., &c., and will continue evenings at 7 o'clock until every lot has been sold. Persons holding tickets the time on which having expired will please take notice.

"FOLEY, Auctioneer.

"F. SELINGER, Broker."

The objections made to this by the pledgor are, in the first place, that the advertisement was premature, and that he was not bound to take notice of an advertisement of his property before the expiration of the full time, and in the second place, that the description of the property was not sufficient to put him upon inquiry; and we suppose that both these objections are good. Nevertheless, the sale commenced on the 29th of April and continued until the 8th day of May, when these books, 44 volumes of Wisconsin Reports, valued at \$3 per volume, were put up and bought in by the pawnbroker himself, for the amount of his debt, \$32.50, and a few days afterwards they were sold at private sale by him to another party. At the trial, the counsel for the plaintiff objected to the admission of this advertisement in evidence, because of its insufficiency in the particulars I have already mentioned; and, having been overruled in that objection, he asked the court to give the jury the following instructions:

1. If the jury believe from the evidence that the defendant sold the pledged property without first publishing a notice of the time and place of sale and therein sufficiently describing the property so that it could be identified as "Wisconsin Reports," said sale was a tortious conversion and entitles the plaintiff to recover from the defendant the value of the property, less the amount already advanced, and interest.

2. That the purchase by the pledgee at his own sale, or sale by him to a third person, of the article pledged, at private sale, was a tortious conversion and entitles the pledgor to elect to recover from the pledgee the value of the property pledged, or treat the bailment as continuing.

3. That if the pledgee purchased at his own sale, and the pledgor elects to treat the bailment as continuing, then a sale of the pledged property to a third person at private sale is a tortious conversion, and entitles the pledgor to recover from the pledgee, the value of the

property, less the amount already advanced and interest, and this although no tender had been made of the amount due.

4. If the jury believe from the evidence that, after the property was sold and purchased by the pledgee, he agreed to hold the pledge for the pledgor for a longer time, then the bailment was re-established.

• All these propositions of law we think to be correct. The trouble is about their application to this particular form of action. If a man converts personal property to his own use, and he sells it and gets the money for it, the party injured has two remedies, viz., either trover, to recover the full value of the property; or assumpsit, for money had and received. But in the latter case he recovers only the amount actually received by the tortfeasor from the sale of the property.

This is an action for debt. It is not an action for money had and received, apparently, but an action upon a debt due for goods sold. The suit was commenced before a justice of the peace upon a bill of particulars in this form:

"MR. FREDERICK SELINGER

To HORACE STILES, Dr.

"To 44 volumes of Wisconsin Law Reports . . . . . \$130  
"Cr. by cash advanced and interest - 30

Leaving a balance of . . . \$100"

So that, to make sense at all out of this it must be regarded as an action for goods bargained and sold. But the facts in this case do not sustain that action at all. If we can give this any other sort of significance as an action for debt, it is at best an action of debt for money had and received; that is, for the proceeds of these law reports. In that case the plaintiff would be entitled only to the amount received for them by Selinger, less the amount advanced with interest thereon; and that is exactly what the court allowed him. So that although there may have been error in the ruling of the court below on the propositions of law, the result is right in this form of action. For these reasons the judgment will have to be affirmed, although the law of the counsel for the plaintiff would have been correctly stated if the action had been properly brought.

A JUDGMENT of \$25,000 has been rendered against the *Chicago Herald* in a libel suit. Evidently the jury that gave a verdict of \$20,000 against the *Detroit Evening News* is on a visit to Chicago.

# United States Supreme Court.

No. 400.—OCTOBER TERM, 1882.

THE UNITED STATES, Plaintiff,

v.

JAMES H. BRITTON AND BARTON BATES.

*On a certificate of division in opinion between the Judges of the Circuit Court of the United States for the Eastern District of Missouri.*

The offence of conspiracy under Section 5,440, R. S. U. S. does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute that there must be an act done, to effect the object of the conspiracy, merely affords a *locus penitentie*. So that before the act done, either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute.

In an indictment for conspiracy under said Section 5,440, the conspiracy must be sufficiently charged, and it cannot be aided by averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy.

An indictment charging that certain persons being directors of a National Banking Association, with intent to defraud the association, did conspire to wilfully misapply its moneys and funds by procuring to be declared by the association a dividend of its net profits when there were no net profits sufficient in amount to pay it, does not charge a criminal offence under Section 5,204 and 5,409, R. S. U. S.

## STATEMENT.

Section 5,440 of the Revised Statutes declares: "If two or more persons conspire . . . to commit any offence against the United States, . . . and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars, and to imprisonment not more than two years."

Section 5,209 of the Revised Statutes provides as follows: "Every president, director, cashier, teller, clerk or agent of any" banking "association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds or credits of the association, . . . or who makes any false entry in any book, report or statement of the association, with intent in either case to injure or defraud the association, or any company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of such association, . . .

. . . shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

The defendants were indicted under section 5,440 of the Revised Statutes. The indictment contained two counts. The first count

charged, in substance, as follows: That Britton was the president and director of the National Bank of the State of Missouri, in St. Louis, a national banking association organized under the act of Congress, and that Bates was vice-president and a director of the same association; that Britton and Bates, while president and vice-president respectively, and directors of said association, did conspire with each other to wilfully misapply a large sum of money belonging to, and the property of said association, to wit, the sum of \$87,500, by means of procuring to be made, on June 30, 1876, by the said association, a dividend of three and one-half per centum on the capital stock of the association, which said dividend was to be greater, in the sum of \$87,500, than the net profits of said association on hand after deducting from said net profits the amount of the losses and bad debts of the association existing on said 30th day of June.

The acts done to effect the object of the conspiracy were, in substance, alleged as follows: That Britton falsely represented to one Walsh, who, on June 30, 1876, was also a director of the association, that the net profits of the association were on that day sufficient in amount to warrant and permit the declaration of said dividend, and did thereby induce the said Walsh to assent to the declaration of said dividend, and to join, on said June 30, as such director, with Britton and Bates, directors as aforesaid, in the declaration of said dividend, they, the said Britton, Bates and Walsh, constituting a majority in number of the directors of said association; that, to effect the object of said conspiracy, Britton did further, upon the said June 30, cause and procure to be made by one Edward P. Curtis, in the record of the proceedings of the board of directors of said association, the following entry: "St. Louis, June 30th, 1876. Present, Messrs. Britton and Walsh, Mr. Bates assenting on the 29th. Ordered that a dividend of 3½ per cent. be declared payable on the 10th proximo, and that the transfer books be closed till that date. Attest, Edward P. Curtis, cashier;" that afterwards, on July 8, 1876, in further pursuance of and to effect the object of said conspiracy, the said Britton and Bates did each receive from said association, and convert to his own use, a large sum of money, the said Britton the sum of \$5,397, and the said Bates the sum of \$4,112.

The second count was similar to the first, except that after averring that said dividend so to be declared on said June 30, 1876, was to be false and fraudulent, it was added that there was on said June 30, 1876, due and

owing to said association certain debts, specifying them, amounting in the aggregate to the sum of \$797,214.29; that upon such debts there was owing to the association, then past due and unpaid, interest for a period of six months; that said debts were "not well secured and in process of collection," and their aggregate amount was largely in excess of the net profits and purported net profits of said association then on hand, as said Britton and Bates then well knew, and that said debts were bad debts within the meaning of section 5,204 of the Revised Statutes, as said Britton and Bates then well knew.

The defendants demurred to the indictment. Upon the hearing of the demurrer, the judges of the circuit court were divided in opinion upon the following questions:

1. Whether, under section 5,209 of the Revised Statutes of the United States it was necessary to aver that the alleged conspiracy was entered into with intent to injure and defraud; and whether the several counts in this indictment not containing the said allegations are good and sufficient in law.

2. Whether it was necessary in this indictment, in addition to the allegations charging the conspiracy to wilfully misapply certain funds and property of the association, by means of procuring to be made by the board of directors a dividend, as alleged in the indictment, to further allege that said dividend was in pursuance of said conspiracy declared and made; and, if so, whether the same is sufficiently charged therein, and whether it was also necessary to allege that said dividend was fraudulent when declared, and also when paid.

3. Whether, under § 5,209 of the Revised Statutes of the United States, it was necessary in this indictment to charge that the funds alleged to have been misapplied had been previously entrusted to the possession of the defendants.

4. Whether the indictment in this case alleges with sufficient certainty that the bank had no net profits out of which to declare and pay the dividend alleged to have been fraudulent.

5. Whether the said defendants, as directors of the said banking association, are liable to the penalties provided by the said § 5,209 upon proof, that they, as such directors, wilfully voted for the declaration of a dividend, knowing that there were no net profits out of which to pay the same; and, if liable, must the indictment charge that such dividend was ordered or voted for with intent thereby to defraud the association or other persons.

Mr. Justice Woods delivered the opinion of the court.

The offence charged in the counts of this indictment is a conspiracy. This offence does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentie*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under section 5,440, the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy. *Reg. v. King*, 7 Q. B., 782; *Commonwealth v. Shedd*, 7 Cush., 514.

The charge against the defendants is a conspiracy to wilfully misapply the funds of the association. It is alleged in the counts of this indictment that they, being directors, with intent to defraud the association, did conspire to wilfully misapply its moneys and funds by procuring to be declared by the association a dividend of its net profits, when there were no net profits sufficient in amount to pay it.

Such a dividend is forbidden by section 5,204 of the Revised Statutes, which declares as follows:

"No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained equal to or exceeding its undivided profits then on hand, no dividend shall be made, and no dividend shall ever be made by any association while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association on which interest is past due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of this section."

We are, therefore, to inquire whether the conspiracy entered into by and between the defendants to misapply the moneys of the association by procuring the declaration by the association of a dividend greater than the net profits of the association is a criminal offence against the United States.

There are no common law offences against the United States, (*United States v. Hudson*, 7 Cranch, 32; *United States v. Coolidge*, 1 Wheat., 415), and section 5,204 does not of itself create any offence against the United States.

But it is contended on behalf of the United States that the procuring of a dividend to be declared by the association when there are no net profits to pay it is a wilful misapplication of the moneys and funds of the association, which is made an offence by section 5,209 of the Revised Statutes, and that a conspiracy to commit this offence is made punishable by section 5,440.

We think this construction of the statute is unwarranted and that the indictment is based on a misconception of its provisions.

The indictment having charged a conspiracy between the defendants to misapply the moneys of the association, proceeds to aver by what means the misapplication was to be effected, namely, by procuring to be declared by the association a dividend when there were no net profits to pay it. If procuring the declaring of such a dividend by the association is not a wilful misapplication of its funds by these defendants, then the indictment charges no offence. The declaring of a dividend by the association when there were no net profits to pay it, is, in our judgment, not a criminal misapplication of its funds. It is an act done by an officer of the association in his official and not in his individual capacity. It is, therefore, an act of maladministration and nothing more, which, while it may subject the association to a forfeiture of its charter, and the directors to a personal liability for damages suffered in consequence thereof by the association or its shareholders, does not render them liable to a criminal prosecution. The act belongs to the same class as the purchase by a banking association of its own shares when not necessary to prevent a loss on a debt due it, which, in case No. 406, just decided, we held not to be a criminal misapplication of the funds of the association. If, therefore, the indictment had charged that the defendants had misapplied the funds of the association by themselves declaring a dividend, when there were no net profits to pay it, it would not have charged a criminal act, much less when it merely charges that they conspired to procure the association to declare a dividend under like circumstances. So that it appears on the face of the indictment that the conspiracy charged was not a conspiracy to commit an offence against the United States.

## United States Court of Claims.

ARNOLD A. KULB vs. THE UNITED STATES.

1. Where the holder of a certificate of deposit payable to order, rendered to him by the payee and made payable to his order, is stolen from him and the endorsement to his order fraudulently erased, so that the instrument appears to be endorsed in blank, and in that condition is purchased in open market without privilege of the owner, the purchaser cannot maintain an action therein if the original endorsee sets up a claim to it, and disputes the holder's title, the holder acquires no title by purchasing such case.
2. The purchaser in the city of London, of the United States Treasury certificate of deposit, below its market value is presumed to have been warned of the seller's want of title.
4. The value of the pound sterling, and the market price in London of exchange on New York, explained.

RICHARDSON, J., delivered the opinion of the court.

This suit is brought to recover the amount of a gold certificate issued by the defendants, through the assistant treasurer of the United States at New York, for \$5,000, payable to the order of E. H. Birdsall, a subordinate of the assistant treasurer, and by him indorsed, bearing date November 14, 1866.

The genuineness of the certificate is not controverted. The defendants refuse and resist payment to the claimant because the ownership of the certificate having been claimed by another person, one Burr S. Craft, Congress passed an act directing payment to be made to him, upon his giving a bond of indemnity, and he has been paid the full amount.

The title to the certificate, as between the claimant and Burr S. Craft, is therefore the only question in controversy.

The facts upon which the respective parties rely in support of their several claims of title, concisely stated, are these:

Craft received the certificate for a valuable consideration and in the ordinary course of business, in New York city, when it was indorsed in blank by the payee, E. H. Birdsall. He thereupon caused to be written over the name of Birdsall the words "Pay to the order of Burr S. Craft."

On the night of the 18th and 19th of December, 1873, this certificate, so indorsed, with others of like kind, was stolen from him in the city of New York, of which fact he immediately gave public notice, and he has never since authorized its sale or transfer. The ownership of the certificate by Craft up to that time is not controverted.

On the 18th of February, 1879, Congress

passed the following act for his relief (20 Stat. L., 596). He gave the bond of indemnity therein required, and was paid from the public Treasurer the full amount of the certificate:

CHAP. 66.—An act for the relief of Burr S. Craft.

"Be it enacted, &c., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Burr S. Craft the sum of five thousand dollars in gold coin of the United States, in lieu of certificate of deposit numbered twenty-five thousand three hundred and seventy eight, issued under act of Congress approved March third, eighteen hundred and sixty-three, by the Assistant Treasurer of the United States at New York, on the fourteenth day of November eighteen hundred and sixty-six, for the sum of five thousand dollars, payable in the gold coin of the United States, to the order of E. H. Birdsall, and by the said E. H. Birdsall indorsed, payable to the order of Burr S. Craft, which said certificate, it is claimed, was lost or stolen on or about the eighteenth day of December, eighteen hundred and seventy-three:

Provided, That before the payment hereinbefore authorized the said Burr S. Craft shall first file in the Treasury a bond in a penal sum double the amount of the said missing certificate, with sufficient sureties, with condition to indemnify and save harmless the United States from any claim because of the said lost or missing certificate; which bond shall be executed in the same manner and form as required under section thirty-seven hundred and five of the Revised Statutes for the issue of duplicate registered interest bearing bonds of the United States."

"February 18, 1879."

On the 21st of October, 1879, more than thirteen years after this certificate was first issued, nearly six years after the robbery, and more than eight months after Congress had passed an act which, after describing the certificate by date and number, and as having been indorsed "Payable to Burr S. Craft," authorized its payment to him, it was purchased by the claimant, a banker and money-changer, at his place of business in London, England, of one Braham, also a citizen of London, well known to the claimant.

At the time of this purchase by the claimant the words "Pay to the order of Burr S. Craft," which had been written over the indorsement of Birdsall while in the possession of Craft, were not to be seen. Between the time of the robbery and of this purchase those words had been fraudulently erased by some person unknown, and so skillfully was the erasure made that no trace of those words

could be discovered by the closest examination and scrutiny.

How the claimant's vendor, Braham, obtained possession of the certificate, or what was its condition when it came into his hands, does not appear. Although the claimant was well acquainted with him and knew his residence in London, he did not take his deposition, while he took the depositions of other persons there.

The only question of law arising upon these facts is whether, under the circumstances, the claimant acquired a good title to the certificate as against Craft, on whose account the defense is made.

It has long been settled as a general rule of law that a fraudulent change of the face of a promissory note, bill of exchange, or other written commercial instrument, by either adding, altering, or erasing any material words or figures, so as to give a different legal effect or operation to the contract from that agreed upon by the original parties, is not only a forgery, but one which renders the instrument void or voidable as against the promisor, even in the hands of a *bona fide* holder who purchased it for a full and valuable consideration and without notice of the alteration. (2 Daniel on Negotiable Instruments, §§ 1373-1416; 2 Parsons on Notes and Bills, 2d ed., 571, 584; Story on Promissory Notes, 7th ed., § 871, note; 6 Wait's Actions and Defences, 469; Fay v. Smith, 1 Allen, 477; Wade v. Withington, 1 Allen, 561; Citizens' Nat. Bank v. Richmond, 121 Mass., 110; Wood v. Steele, 8 Wall., 80.)

In some States it has been held as an exception to the general rule that when the maker of a note or other commercial paper puts it in circulation so negligently and carelessly drawn as to leave room for easy alteration without defacing it, and without thereby giving cause of suspicion of fraud to the most careful examiner, he is not without fault himself, and having thus contributed means for the commission of the fraud, he has been held to be bound by the alteration so made when the instrument had passed into the hands of a *bona fide* holder for valuable consideration without notice. 2 Daniel on Negotiable Instruments, §§ 1405, 1406.

As where a note was written partly in ink and partly in pencil, and the words in pencil were fraudulently erased. (Harvey v. Smith, 55 Ill., 224; Elliot v. Levings, 55 Ill., 214; Seibel v. Vaughan, 69 Ill., 257.) So where the maker left a blank after the words "one hundred" and before "dollars," and the word "fifty" was fraudulently inserted, he was held liable for the note as altered, on account of

his own gross negligence and fault, on the principle that where one of two innocent persons must suffer, the loss should fall on the one who has furnished the opportunity. (*Garrard v. Haddon*, 67 Penn. St., 52; *Zimmerman v. Rote*, 75 Penn. St., 188; *Brown v. Reed*, 79 Penn. St., 370; *Yocum v. Smith*, 63 Ill., 321; *Vicher v. Webster*, 8 Col., 109; *Rainbolt v. Eddy*, 35 Iowa, 440.)

But in Massachusetts the general rule is followed without such exception. It has been held there that the alteration of a promissory note by one of the makers, increasing the amount by the insertion of words and figures in blank spaces left in the printed form, avoids the note as to such makers as do not assent thereto, even in the hands of a *bona fide* holder for a valuable consideration. (*Wade v. Whittington*, 1 Allen, 561; *Greenfield Savings Bank v. Stowell, et al.*, 123 Mass., 196, where the leading authorities are reviewed.) There are other States also in which exceptions to the general rule in similar cases are not recognized. (*Wait v. Pomroy*, 20 Mich., 425; *Holmes v. Trumper*, 22 Mich., 427; *Wash. Sav. Bank v. Ecky*, 51 Mo., 273.)

These principles, and the reasoning upon which they are founded, thus concisely stated, must be our guide in the consideration of the present case.

The findings show, that Craft was the owner of the certificate in controversy in 1873, that it was stolen from him, that at the time of the theft it had upon it an indorsement, "pay to the order of Burr S. Craft," and that before its purchase, six years afterwards, by the claimant those words had been fraudulently erased. This erasure was a forgery of a material part of the instrument, and, according to all authorities, had it been perpetrated upon the face of the note would have made it void as against the promisor, even in the hands of an innocent indorsee who purchased for a valuable consideration without notice. There would seem to be no reason why the same rule should not apply to such a forgery upon the back of the instrument, and render the title thereto void as against the owner, who held title under the indorsement, who had never authorized its erasure, and who had not himself transferred the property. Commercial paper is sold in the market in many respects like other chattels, and purchasers must take the risk of the title as affected by fraud and forgery, relying, as in other cases, upon the warranty of their vendors, which is always implied in the sale of property. *Benjamin on Sales*, §639.

In *Wait v. Pomroy*, 20 Mich., 425, Campbell, C. J., having under consideration the

question whether or not the maker of a note which had been altered after its issue was responsible by reason of having himself left the contract in a form which could be easily altered, says: "But it was well suggested on the argument, no one is bound to guard against every possible felony. And practically, it is a matter of everyday occurrence to feloniously alter negotiable paper as successfully by changes on the face as by any other way. The public are not very much more likely to be defrauded in one way than in another. There can never be absolute safety except in looking to the character and responsibility of the persons from whom such paper is received, and who are always bound for the consideration, if it is forged."

The circumstances of this case are not such as to entitle the claimant to any exception to the general rule that forgery by material alteration avoids the validity of a note even in the hands of an innocent holder who purchased for valuable consideration without express notice of the fraud.

As soon as the loss occurred Craft gave public notice, and subsequently Congress passed an act for his relief, authorizing payment to him. This act was notice to the Treasury Department whence the certificate was issued, and to the office of the assistant treasurer at New York, where it was made payable, if, indeed, it were not notice to everybody dealing in certificates of that kind. Inquiry at either place at the time of the purchase by the claimant, eight months after the passage of the act, would have revealed the claim of Craft. There was enough suspicion attached to the offers of sale to have induced a prudent man to make such inquiry, which by means of the cable he could have done in a few hours, and with small expense as compared with the discount offered.

The buying and selling in London of exchange on New York, is of such magnitude that bills of exchange, bankers' certificates of deposit, checks on banks, payable in the latter city, and obligations against the United States Treasury in the form of bonds, coupons, &c., are staple articles of trade with all the numerous banking and exchange houses in that great commercial center, and command a ready sale at very nearly uniform prices well known to sellers.

Although commercial bills vary somewhat in price according to the credit of the drawers, genuine certificates of deposit and drafts issued by the United States Treasury, like first-class bankers' bills, are not subject to variation in market value on that account. They command the highest price, according to

the rate of exchange, which is published every day in the public journals, and may be known alike to all persons dealing in them, either as buyers or sellers.

A person having a \$5,000 certificate of deposit from the United States Treasury honestly in his possession in London never need to offer it below its market value as shown by the published rate of exchange, and to make such an offer would create suspicion against the validity of the certificate or the holder's right to it.

The claimant bought this certificate much below the market rate. By Revised Statutes, section 3505, it is enacted that the value of the pound sterling for all payments into the Treasury shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and that is supposed to be the relative intrinsic value of the pound sterling or sovereign of Great Britain as compared with the gold coins of the United States, independently of the question of exchange between the two countries. Upon that basis the coin representative of the certificate was £1,027 8s. 7½d. Exchange rarely or never varies more than 1 per cent. from that value one way or the other, because of coming into competition with the importation or exportation of coin, which always takes place whenever it can be done cheaper than bills of exchange can be purchased. Taking exchange at the point most unfavorable to the seller, and this certificate ought to have commanded £1,017 5s. 10½d. At that price, in the hands of an honest holder without suspicion, it would have found a purchaser at any first-class banking house in London. But the claimant bought it for £990, or a discount of about \$150 below its market price.

That the claimant did not take the testimony of his vendor, whom and whose residence he well knew, leaves the suspicious circumstances which are proved, unexplained.

On the whole facts, we are of opinion that the claimant is not entitled to recover, and that his petition must be dismissed.

THE ministers of Chicago recently took under advisement the newspapers of the city, and each denomination appointed a committee to make a report as to the best method of reforming and evangelising the editors and publishers. After prayerful consideration of the matter, the committee all bowed out, and begged to be excused. The exact reason for this strange conduct is not clear. Whether the editors and publishers needed no reformation, or whether the ministers gave them up as a bad lot, beyond all hope, must forever remain a deep mystery.

## Land Department.

Furnished by SICKELS & RANDALL.

Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

JOHN NOONAN ET AL.

vs.

CALEDONIA GOLD MINING COMPANY.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, D., C. July 2, 1883.

*The Comm'r of the General Land Office :*

SIR: I have considered the case of John Noonan and Thomas F. Mahan, applicants for the Bobtail Lode Survey, 80, v. The Caledonia Gold Mining Company, claimant of the Caledonia Lode Survey, 168, Whitewood Mining District, Deadwood, Dakota, on appeal from your decision of June 16, 1882, reversing the action of the register and receiver and holding that it was error to allow the claimant, the Caledonia Company, to file application for patent.

The Caledonia Company commenced suit against the Bobtail Lode claimants in the district court of Lawrence county, Dakota, as required by section 2326 of the Revised Statutes in due time after filing adverse claim. March 9, 1881, final judgment was duly rendered in that court in favor of the plaintiff. On September 5 thereafter the said Caledonia Company made the application for patent aforesaid.

This application embraced other ground in addition to that in conflict with the Bobtail Lode, and for that reason publication was made. At the time said Caledonia Company made such application, it filed a certified copy of the judgment roll with the register of the land office, together with the proper certificate of the surveyor-general, and in other respects complied with the provisions of said section.

When these proceedings subsequent to the judgment were had, no appeal had been taken. The exact time when the case was appealed does not appear, but a certificate of the clerk made May 29, 1882, certifies that at that time the appeal had been taken.

Nearly six months had elapsed after the judgment was rendered before the application for patent was made; and it was probably some months after the application before appeal was claimed.

The error which you allege the register and receiver committed, consisted in receiving the application before the time had elapsed within which an appeal could be taken; or, as stated by you, "patent shall issue only when the party against whom judgment is rendered has no further recourse in the courts."



The section before cited provides that when an adverse claim is filed during the period of publication, all proceedings except the publication of notice and making and filing the affidavit thereof, "shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived."

It further provides that "after such judgment shall have been rendered the party entitled to the possession of the claim or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the Land Office, together with the certificate of the surveyor general that the requisite amount of labor has been expended on improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess."

I cannot assent to your construction of the statute.

After the claimant had obtained judgment in his favor in the court of competent jurisdiction, he was at liberty to take the necessary steps pointed out by the statutes to obtain a patent for the claim or such part of it, as he was entitled to under the decision.

If the opposite party desired to test the right further in the courts, he should take an appeal, and thereby obtain the necessary stay.

The construction given by you, would prevent the successful claimant from taking any subsequent steps toward obtaining a patent until the time for claiming an appeal had expired.

Such time in Dakota is two years. (Code of Civil Procedure, Section 415.) In some of the Mining States and Territories the time for taking appeal or writ of error is probably much longer.

Such construction would cause necessary loss and delay.

It cannot be presumed that an appeal will be taken and I see no necessity for compelling the successful claimant to await such action.

If the defeated party desires to appeal he can prevent the issuing of a patent by promptly claiming that right, and thereby obtain a stay,

The difficulty suggested by you in the way

of the construction which I have suggested is that while the right of appeal remained, the application for the Bobtail Lode in conflict had not been disposed of, and the rule of the Office is that a pending application is an appropriation of the land. The decision of the court of competent jurisdiction, as I view it, does dispose of the application of the defeated party, at least so far as to remove any obstacles in the way of proceedings by the adverse claimants—subject, of course, to the stay which may again be caused by the removal of the case to a higher court.

A principal object in taking an appeal to this Department from your decision is to have the proceeding declared valid which had been taken after the decision in the district court and before the appeal to the Supreme Court.

When an appeal is taken after proceedings subsequent to the judgment have been instituted, and further action is stayed to await the result of an appeal, if the decree is finally in favor of the party instituting the suit, it would not seem to be necessary to go over the ground again, but the steps already taken would be valid, and the party should be permitted to proceed to patent from the point reached in such proceedings when stayed on the appeal.

If publication has been commenced on account of other claims contained in the application, such publication could be completed and affidavit thereof filed in the manner provided in the section cited.

If it had been completed as in this case, it should be allowed to stand.

Since the appeal from your decision to this Department, proof has been filed here that the decision of the district court was affirmed by the appellate court.

Your decision to the effect that the register and receiver erred in receiving the application of the Caledonia Gold Mining Company is reversed.

The papers submitted with your letter of September 29, 1882, are herewith returned.

Very respectfully,

H. M. TELLER,  
Secretary.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

JULY 7, 1883.

Thomas B. Stahl. Bond as constable approved.  
Albert B. Ruff. Official bond renewed as notary public.

Adjourned *etc* *dis*.

**EQUITY COURT.—Justice James.**

JULY 2, 1883.

Beach v. Beach et al. Decree pro confesso and order of publication.

Holmead v. Eslin et al. Final decree. Ratification nisi.

Malihan et al. v. Waggaman et al. Final decree ratifying sale.

Pickrell, ex'r, v. Hume et al. Leave to file cross-bill.

Baxter et al. v. Wheeler. Bond of trustee fixed and approved.

Bright v. Nottingham et al. Trustee appointed.

Hoover v. Marr et al. Lien declared.

In re Joseph Clark. Auditor's report confirmed.

Williams v. Williams et al. Trustee ordered to pay money.

JULY 3, 1883.

Burns et al. v. Cochran et al. Auditor's report confirmed.

Barker et al. v. Gilmore et al. Leave to make new parties.

Kirby et al. v. Stafford et al. Leave to amend bill.

In re D. E. W. Carter. Decree changing name.

Lord v. O'Donoghue. Rule on purchaser to show cause.

JULY 5, 1883.

Mason v. Mason. Pro confesso against certain defendants.

Murphy v. Washington. Order of publication amended.

Noyes v. Gray. Sale of notes confirmed.

Kernin v. Kernin. Trustee to convey and trustee appointed to sell.

Bamberger v. B. & P. R. R. Co. Restraining order returnable.

Van Hoake v. Van Hoake. Attachment returnable.

Quillin v. Quillin. Referred to take proof.

Worthington v. Randall. Pro confesso against Randall.

Richards v. Richards. Testimony ordered taken.

Rieter v. Rieter. Absent defendant ordered to appear.

Remy v. Remy. Same.

Bell v. Wilkinson. Decree modified.

Dayton v. Dayton. Sale finally ratified.

Citizens Bank v. Fanning et al. Order ratifying sale.

**CIRCUIT COURT.—Justice Mac Arthur.**

JUNE 18, 1883.

Young v. Manhattan Life Ins. Co. Leave to amend declaration.

JUNE 19, 1883.

Stockstill & Co. v. Mason. Referred to auditor.

JUNE 20, 1883.

Cahill v. Henry. Judgment for plaintiff for 1 cent.

JUNE 21, 1883.

McCullough v. Graff. Verdict for plaintiff for \$1,651.53.

Young v. Pendleton. Judgment for \$100.

McGraw v. McGraw. Verdict against will.

Randall & Fish v. W. & G. R. R. Co. Judgment of condemnation against garnishee.

JUNE 22, 1883.

Loughran v. Mulloy. Verdict for plaintiff for \$259.36.

Cullinane v. Blumenberg. Motion to file plea overruled. Juror withdrawn and leave to amend declaration.

Stone v. Burch. Verdict for defendant.

JUNE 23, 1883.

Bank of Republic v. Bigelow. Order to pay marshal's fees.

Young v. Pendleton. Judgment set aside and judgment as per stipulation.

Clark v. District of Columbia. Motion for new trial overruled.

Hine v. Magarity. Same.

U. S. v. Hume's Administrators. Demurrer sustained. Leave to amend.

U. S. v. Evans' Administratrix. Same.

Humphrey v. Whitney. Demurrer to pleas 2 and 5 sustained. Exception to plea 4 overruled.

Bowie v. Pickerell's Executor. Demurrer to plea 2. Plea sustained and balance overruled with leave to amend.

Sugar v. Busher. Demurrer to declaration sustained.

Nailor et al. v. Conley et al. Same. Leave to amend.

Main et al. v. Bonifant. Demurrer to plea overruled and time given to reply.

U. S. v. Howgate. Judgment by condemnation of specific property.

U. S. attorney's accounts approved.

**CRIMINAL COURT.—Justice Wylie.**

U. S. v. Joseph Acton. Indicted for misconduct in office. Defendant demurred.

U. S. v. Joseph Acton. Indicted for violation of Sec. 357 R. S. D. C. Same.

U. S. v. John W. Coomes. Indicted for receiving stolen property. Moved to quash.

U. S. v. John W. Coomes. Indicted for misconduct in office. Motion to quash.

U. S. v. John W. Coomes. Indicted for violating Sec. 357 R. S. D. C. Same.

U. S. v. Geo. W. McElfresh. Indicted for receiving stolen property. Plea in abatement.

U. S. v. Geo. W. McElfresh. Indicted for misconduct in office. Demurrer filed.

U. S. v. Geo. W. McElfresh. Indicted for violating Sec. 357 R. S. D. C. Demurrer filed.

U. S. v. Geo. W. McElfresh. Indicted for misconduct in office. Same.

U. S. v. Geo. W. McElfresh. Indicted for receiving stolen property. Plea in abatement.

U. S. v. Wm. P. Kellogg. Indicted for illegally receiving money whilst a Senator. Motion to strike out defendant's pleas granted. Demurrer to other pleas argued and considered.

JULY 2, 1883.

U. S. v. Patrick Mahoney. Indicted for larceny. Verdict not guilty.

U. S. v. Richard Green. Information for assault. Plea in abatement sustained. Defendant discharged.

U. S. v. Frederick Blackwell. Indicted for second offense petit larceny. Verdict guilty. Sentenced to penitentiary for three years.

U. S. v. Susie Clark. Information for assault. Verdict not guilty.

U. S. v. Wm. Ellis. Information for assault. Verdict guilty. Motion for new trial granted.

U. S. v. Wm. Robinson. Indicted for larceny from the person. Verdict not guilty.

JULY 3, 1883.

U. S. v. Frank Whitney, &c. Indicted for second offense petit larceny. Plea guilty. Sentenced to penitentiary for two years.

U. S. v. Christiana Diggs. Information for re-

ceiving stolen property. Verdict guilty. Sentenced to jail for 30 days.

U. S. v. Ellen Chase, &c. Indicted for larceny. Plead guilty. Sentenced to jail for 30 days.

U. S. v. Hart Cohen. Information for assault. Verdict not guilty.

U. S. v. James Willson, &c. Indicted for house breaking in night. Verdict guilty. Sentenced to penitentiary for 2 years.

U. S. v. Richard Craig. Information for assault. Verdict not guilty.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JULY 7, 1883.  
24589. Wm. H. Tenney & Sons v. James G. Fowler et al. Bond, \$1,000. Piffs atty, S. S. Henkle.

JULY 9, 1883.  
24590. Henry Lewis et al. v. Mary E. Hill, administratrix. Notes, \$7,120.35. Piffs atty, W. B. Webb.

24591. William B. Webb, administrator, v. Mary E. Hill, administratrix. Notes, \$11,064.77. Piffs atty, W. B. Webb.

24592. Benjamin U. Keyser, receiver, v. George M. Kober. Piffs atty, E. K. Elliot.

JULY 10, 1883.  
24593. James M. T. Gleason v. The Virginia Midland R. R. Co. Damages, \$15,000. Piffs atty, I. H. Ford.

JULY 11, 1883.  
24594. George Manley v. James W. Barker. Account. \$3,487.51. Piffs atty, H. E. Davy.

24595. Same v. Same. Plea of title. Piffs atty, same.

24596. Michael Hayes v. Richard B. Smith. Account. \$583. Piffs atty, O. Carrington.

24597. The United States ex rel., Chas. H. Parsons et al. v. James B. Edmonds et al. Mandamus. Piffs attys, Harris & Oliver.

JULY 12, 1883.  
24598. William H. Bailey v. Bryan Dowling et al. Damages, \$5,000. Piffs attys, Moss and Roy.

24599. Bridget O'Riley v. James Murphy. Replevin. Piffs atty, D. E. Cahill.

### IN EQUITY.—New Suits.

JULY 7, 1883.  
8631. Mary L. Mills v. Edward L. Mills. For divorce. Com. sol., L. M. Saunders.

8632. Mary M. Killian et al. v. John Killian et al. Com. sol., E. A. Newman.

8633. Ellen A. McCarthy et al. v. Catharine et al. Partition. Com. sol., Hanna & Johnston.

JULY 10, 1883.  
8634. Eliza A. Offutt v. George A. Bohrer et al. To quiet title. Com. sol., R. P. Jackson.

8635. George F. Schafer v. Babette Sellhausen et al. Creditors' bill. Com. sols, Gordon & Gordon.

JULY 11, 1883.  
8636. William W. Hudson v. Catherine Hudson. For divorce. Com. sol., O. Carrington.

JULY 12, 1883.  
8637. Henry Conradis v. John Walter, jr. et al. Injunction and account. Com. sol., Leon Tobriner.

### PROBATE COURT.—Justice James.

JUNE 16, 1883.  
Will of Wm. Lilley; filed for probate and proved.  
Estate of George Alcorn; administrator appointed and bonded.

Will of Wm. H. Herbert; proved by third witness.  
William B. Woodward, guardian; allowance for ward ordered.

Estate of Virginia Tayloe; demurrer filed.  
Estate of Geo. M. Hopkins; notice to executor for settlement.

Estate of John W. Starr; order of publication.  
Estate of John W. Hagan; administrator bonded.  
In re estate of James Ridgway; executor allowed to pay on account of note.

John R. Brown, guardian; appointed and bonded.

August Peterson, guardian; appointed and bonded.

Estate of William Barnes; administratrix appointed and bonded.

Estate of James Cross; administratrix appointed and bonded.

Will of Cornelius Cohan; proved by two witnesses.

Accounts passed:  
Estate of Margaret Kennedy; final account of administrator.

Thomas Barry, guardian; final account.

Estate of Wm. B. Lacy; first account of administrator.

Estate of Anna Lindsley; final account of administrator.

Estate of Geo. McDermott; final account of administrator.

Estate of John W. Rawlings; first account of administrator.

Estate of Jacob W. Ker; final account of administrator and distribution to creditors.

John Moran, guardian; final account.

Michael O'Toole, guardian; third account.

John Shanahan, guardian; final account.

Estate of Geo. A. Morrison; will sent with commission to examine witness to will.

JUNE 18, 1883.

Will of Wm. Lilley; dated October 23, 1871, filed.

Estate of Wm. Barnes; administrator's bond completed.

JUNE 19, 1883.

Estate of Geo. Alcorn; administrator bonded and qualified.

Estate of James Sayers; executrix bonded and qualified.

Copy of will of Elizabeth A. Smith; filed and recorded.

Estate of Michael H. Homiller; administratrix bonded and qualified.

Estate of John M. Johnson; report of executrix of debts and account of sales.

JUNE 20, 1883.

Estate of Geo. A. Morrison; will returned with commission duly executed.

John B. Patterson, guardian; bonded and sureties justified.

Estate of Benjamin F. Gridley; inventory returned by administrator.

JUNE 21, 1883.

Will of Robert E. Thompson; petition of one of executors for probate; renunciation of the other executor.

Estate of Michael H. Homiller; administratrix bonded and letters issued.

JUNE 22, 1883.

Estate of Caroline Denham; administrator appointed and bonded.

Estate of Hayward M. Hutchinson; administratrix bonded and qualified.

Estate of Robert E. Thompson; will proved by two witnesses.

Estate of Cornelius Cohan; publication ordered.

Thomas E. Waggaman, guardian; appointed and bonded in place of former guardian resigned.

Alice A. O'Leary, guardian; appointed and bonded.

Will of Jos. H. Hanlein; filed for probate and letters granted, executrix bonded.

Estate of Emma B. Thomson; sale of bond directed.

Estate of John G. Killian, administration c. t. a., appointed and qualified.

Estate of Wm. Lilley; will admitted to probate and administration c. t. a., appointed and bonded.

### Legal Notices.

#### THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of *Telemachus Ford*, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

M.S. ALICE A. J. FORD, Executrix.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 10, 1883.

In the case of *Wm. Tayloe Snyder*, Executor of *Edward Thornton Tayloe*, late of Alabama, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Monday, the 30th day of July, A. D. 1883, at 9:30 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the *Washington Law Reporter*, previous to the said day, and also in the "*Norfolk Landmark*," a newspaper published in Norfolk, in the State of Virginia.

M.S. Test: H. J. RAMSDALL, Register of Wills.

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscriber of Baltimore, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Ann Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of July, 1883.

THOMAS T. HALL,

119 Welcome Alley, Baltimore.

DANIEL O'C. CALLAGHAN

and

W. J. WATERMAN,

Solicitors.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Chelsea, Massachusetts, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hattie V. Bennett, late of Chelsea, Massachusetts, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

PHILO H. BENNETT, Executor.

JAMES G. PAYNE, Proctor.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily Johnson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

JNO. H. WHITE, Executor.

WORTHINGTON & HEALD, Solicitors.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Davidson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

WM. H. WEST, Administrator.

E. B. HAY, Solicitor.

28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 7th day of July, A. D. 1883.**

CHARLES J. KINSOLVING ET AL. } No. 3566. Equity.

ROBERT M. JOHNSON ET AL. }

On motion of the complainants, by Messrs. Hanna & Johnston, their solicitors, it is, this seventh day of July, A. D. 1883, ordered, that the defendant Thomas Jefferson Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published for three successive weeks in the Washington Law Reporter.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test;

28-3 E. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Mt. Pleasant, So. Carolina, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of S. Pamela Mackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of July, 1883.

E. W. M. MACKEY, Administrator.

CHITTENDEN & MACKEY, Solicitors.

28-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Sands, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

28-3 F. P. B. SANDS, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah H. B. Magruder, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

28-3 CHARLES M. MATTHEWS, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Egan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

MARY ANNA EGAN, Administratrix.

WM. T. S. CURTIS, Solicitor.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Ezekiel Hughes, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1883.

28-3 CHAS. H. ORIGIN, Jr., Administrator c. t. a.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 13, 1883.**

In the matter of the Will of Robert E. Pywell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Edwin F. Pywell, one of the executors.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.

E. D. WRIGHT, Solicitor.

28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 13, 1883.**

In the matter of the Will of William Fessenden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said dec'd, has this day been made by Mary Dunlevie Fessenden.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

CHARLES P. JAMES, Justice.

Test: H. J. RAMSDALL, Register of Wills.

D. W. FESSENDEN, Solicitor.

28-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,SPARK ET AL. }  
v. } No. 8,412. Equity.  
COYLE ET AL. }

The trustee, Andrew C. Bradley, having reported that he has sold the real estate in the proceedings described to wit, lot No. 11, in square No. 461, in the city of Washington, D. C., to Frank P. May, for \$18,000; it is, by the court this 26th day of June, 1888, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1888. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 27-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of July, 1888.BENJAMIN K. PLAIN, trading and  
doing business under the firm  
name and style of B. K. Plain  
& Co., Plaintiff,v.  
MELVILLE S. NICHOLS, trading  
and doing business under the  
firm name and style of M. S.  
Nichols & Co., Defendant.

No. 24,553. At Law.

On motion of the plaintiff, by Mr. E. A. Newman, its attorney, it is ordered that the defendant, Melville S. Nichols, trading and doing business under the firm name and style of M. S. Nichols & Co., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. Test: 27-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry A. Jackson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of December, 1888, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1888.

27-3 ROBERT J. DOUGLASS, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. July 6, 1888.

In the matter of the Estate of John Coyne, late of Soldiers' Home, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Patrick J. Durkin, (letters to issue to Benjamin F. Rittenhouse, Major, U. S. A.)

All persons interested are hereby notified to appear in this court on Friday, the 27th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
GORDON & GORDON, Solicitors. 27-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. July 6, 1888.

In the matter of the Will of Daphne Hungerford, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan Pierce, (Howard Pierce, executor.)

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
EDWARD D. WRIGHT, Solicitor. 27-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of July, 1888.HOOD, BOMBRIGHT & Co. }  
v. } No. 24,522. At Law.

JOHN LEONARD.  
On motion of the plaintiff, by Messrs. Ross & Dean, their attorneys, it is ordered that the defendant, John Leonard, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.  
By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 27-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the day of July, 1888.ANTON REMY }  
v. } No. 2547. Equity Docket 23.

OLARA REMY.  
On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Olara Remy, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.  
By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 27-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of George A. Morrison, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1888.

26-3 FRANCIS W. EDWARDS,  
1837 14th street, northwest.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Draeger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 28th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1888.

MARY DRAEGER, Administratrix.  
JOSEPH FORREST, Solicitor. 26-2

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 13th day of June, 1888.MICHAEL JOACHIM, EXECUTOR OF  
LOUISA JOACHIM

No. 24,523. Law Doc.

JOHN C. JOACHIM.  
On motion of the plaintiff, by Messrs. Crittenden & Mackey, her solicitors, it is ordered that the defendant, John C. Joachim, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court. MAC ARTHUR, Justice.  
True copy. Test: 26-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,ROBERT COHEN }  
v. } No. 7,592. Equity Docket 21.

J. H. COHEN ET AL.  
Andrew B. Duvall and Henry E. Davis, trustees, having reported to the court the following sales of the real estate in the proceedings mentioned, viz.: said part of lot five, in square four hundred and sixty-one, to Robert Cohen, for \$18,046; the north 25 feet front by depth of lot nine, in square seven hundred and eighty-five, to Ignatius Miller, for \$2,975; the south part of said lot nine, to Albert M. Read, for \$672 37; and said sub-lot twenty-four, in square three hundred and fifty-eight, to Ellen O. Toomey, for \$762 51; and that said Cohen and Miller, desire to pay all cash for their respective purchases; it is, by the court, this 19th day of June, A. D. 1888, ordered, that said sales and each of them be ratified and confirmed on the 19th day of July, 1888, unless cause to the contrary thereof be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said last named day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 26-3 H. J. RAMSDELL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward E. Anderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

WILLIAM S. ANDERSON, Executor.  
E. D. WRIGHT, Solicitor. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Thompson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883.

WILLIAM MIDDLETON, Executor.  
RICHARD P. EVANS, Solicitor. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of Yorkers, N. Y., Racoon, West Virginia, and Sacketts Harbor, N. Y., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of June, 1883.

F. NEMEGYI,  
ALEXANDER STRAZ,  
HARRY C. EGBERT,  
J. J. DARLINGTON, Solicitor. 27-3. Executors.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Sitting as an Orphans' Court for the said District, the 2d day of July, A. D. 1883. Hagner, J.**

In re estate of Margaret Adams.  
Upon reading the foregoing petition of Benjamin P. Snyder, it is ordered, that Samuel Adams, Elizabeth Mulloy, Samuel Mulloy, Eliza Arnold, William L. Arnold, George Adams, Margaret Adams and Lydia, otherwise called Eliza Ann Adams, show cause on or before the 29th day of September, A. D. 1883, why the last will and testament of the said Margaret Adams, propounded for probate by the said Benjamin P. Snyder, who is named as executor therein, should not be admitted to probate and why Letters Testamentary should not be issued to him thereon. Provided, that a certified copy of this order be published once a week for three successive weeks prior to the said 29th day of September.

By the Court. A true copy. Test: A. B. HAGNER, Asso. Justice.  
H. J. RAMSDALL, Register of Wills, D. C. 27-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 2d day of July, 1883.**

FRANK L. BRACH } No. 3444. Eq. Dec. 22.  
v. COLUMBUS BRACH ET AL.

On motion of the complainant, by Mr. E. K. Elliot, Esq., his solicitor, it is ordered that the defendant, Mary Ann Lane, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. True copy. Test: CHAS. P. JAMES, Justice.  
E. J. MEIGS, Clerk. 27-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the day of July, 1883.**

MOLLIE B. REITER } No. 3,414. Eq. Dec. 23.  
v. JOHN H. REITER.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, John H. Reiter, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A true copy. Test: CHAS. P. JAMES, Justice.  
E. J. MEIGS, Clerk. 27-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8696, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 23d day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.65; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$400 to Robert E. Frey, as Treasurer of 15th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$400 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengis, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test: E. J. MEIGS, Clerk.

26-6 By M. A. CLANCY, Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 25th day of June, 1883.**

EDWIN B. HAY ET AL } No. 5611. Eq. Dec. 23.  
v. GEORGE E. KIRK, TRUSTEE, ET AL.

On motion of the plaintiffs, by Mr. Edwin B. Hay, their solicitor, it is ordered that the defendant, George Rufus Zell, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 26-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Sitting in Equity.**

JAMES L. BARBOUR, Adm'r, } No. 7,619. In Equity.  
v. OWEN LEDDY.

CATHARINE LEDDY } Consolidated with  
v. MICHAEL LEDDY ET AL.

On consideration of the trustees' report of sales made of the real estate of Owen Leddy, Jr., deceased, it is this 15th day of June, A. D. 1883, ordered, adjudged and decreed, that the sales be and the same are hereby ratified unless cause to the contrary thereof be shown on or before the 15th day of July, A. D. 1883. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the City of Washington, D. C., once a week for three successive weeks before the said 15th day of July.

By the Court.

CHAS. P. JAMES, Justice.

True copy. Test: 26-3 E. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Tullock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

27-3 SEYMOUR W. TULLOCK, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel T. Ellis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

LENORA A. ELLIS, Administratrix.  
EDWARDS & BARNARD, Solicitors. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jacob L. Dorwart, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

SUSAN D. DORWART, Executrix.  
VORHIES & SINGLETON, Solicitors. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Belinda Kondrup, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1883.

AUGUST PETERSEN, Executor.  
CARUSI & MILLER, Solicitors. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of William Lilley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1883.

FREDERICK B. LILLEY, Administrator c. t. a.  
ORITTENDER & MACKAY, Solicitors. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Crose, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1883.

WILLIAM E. LAPHAM,  
Room 32½ Interior Department.  
26-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John G. Killian, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883.

26-3 REYNALD FENDALL, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Scott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1883.

LUCINDA H. SCOTT, Executrix.  
EDMUND A. BAILEY, Solicitor. 26-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James Sayers, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of June, 1883.

26-3 MARGARET SAYERS, Executrix.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Middleton, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1883.

ELLIDA J. MIDDLETON, Executrix.  
H. T. TAGGART, Solicitor. 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. June 16, 1883.**

In the case of Samuel O. Raub, Executor, of George N. Hopkins, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 18th day of July, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.

WM. T. JOHNSON, Solicitor. 26-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. June 16, 1883.**

In the matter of the estate of John W. Starr, late of the said District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Sarah M. Starr.

All persons interested are hereby notified to appear in this court on Friday, the 18th day of July, 1883, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.



# Washington Law Reporter

WASHINGTON - - - - - July 21, 1893.

GEORGE B. CORKHILL - - - EDITOR

## Marital Separations and Titles.

The increasing number of spouses whose marriage ties are in doubt, or whose cohabitation is suspended, and whose relations, if any, are adverse and hostile, is drawing increasing attention to the effect of such situations upon the title to real property.

He who has to advise on the bringing of an action for divorce, where the question as to what jurisdiction is, under the circumstances, the proper one, should not fail to consider the bearings of the result on the title to property, if real property be involved. Of course, land within a State where divorce is granted can be conveyed in accordance with the rights of the parties after the decree; but the situation is sometimes very different, and quite embarrassing where the decree is obtained in another State from that where the land is situated, and there is a substantial difference between the law justifying divorce in the two jurisdictions. Then the question arises whether the courts of the State in which the land lies will respect a divorce granted in the other State.

It has been suggested that the law should therefore be modified so as to allow that wherever husband and wife are living apart under a judicial separation or divorce, or under an agreement of separation, either should be free to sell and convey his or her land without the other's joining in the deed. A bill to this effect, we believe, was recently passed by the legislature in Pennsylvania, but was disapproved by the Governor. Such a measure, however, seems to be going far beyond what is required, and would have the unfortunate effect, in many cases, of inviting separations where it is the policy of the law to discourage them. The rights which vest in respect to real property by entering into the marriage state, are rights which ought to be cherished and subserved, and the fact that their existence may embarrass and hinder separations which would otherwise take place upon light cause is an advantage to the com-

munity, although it may often be felt as a hardship by the parties to a bitter personal difference.—*N. Y. Daily Register.*

## Pleading.

"The system of special pleading," remarked Mr. W. W. Smith, in a recent address before the Arkansas Bar Association, "which prevailed in this State before the war, and for a few years after its close, possesses a fascination for everyone who has mastered its details. It constitutes a most refined species of logic. In fact, it is the only logical scheme for developing the issues to be tried which has ever been in use among English-speaking people. But there are better things in this world than logic. Under the old system, the pleaders were intellectual wrestlers, and unless they were equally matched, the weaker was liable to be tripped up on collateral issues and questions of technical accuracy, not much affecting the merits of the controversy. Thus the client was often punished for the mistakes of his attorney. If anyone will compare a volume of our recent Reports with those of an earlier date he cannot fail, I think, to be struck by the fact that causes are now less frequently decided upon points of pleading and practice. The theatre of war has been changed from the realm of words to that of things; and the most formidable weapon in a lawyer's hand is no longer dialectical skill, but an intimate acquaintance with the rules of evidence. It is only fair, however, to say that these same rules of evidence took root and grew up under the system of pleading as it existed at common law, and it is difficult to understand them, with their exceptions and limitations, without some acquaintance with the science of pleading as it is expounded in Chitty and Stephen."

AN ACTION has been brought in the Superior Court of New York City by Louis Batist against the Manhattan Railway Company. The plaintiff declares that on June 16th last he purchased a ticket at the Canal street station of the elevated railroad, and was about to enter one of the cars when, he avers, the conductor said to him: "You are a Jew. We do not permit Jews upon this car," and at the same time pushed him from the car and struck him several times in the face. The plaintiff declares that the assault was a great shock to him, and that he was confined to his home several days on account of his injuries. Through his attorney, Jacob P. Berg, he has brought suit against the company to recover \$5,000 damages.



## Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

HAMILTON A. MOORE, BY NEXT FRIEND,  
HAMILTON O. MOORE,

vs.

THE METROPOLITAN RAILROAD COMPANY.

AT LAW. No. 23,789.

{ Decided May 31, 1883.

{ The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. Even though the evidence for the plaintiff was insufficient to make out a *prima facie* case, this court will not sustain an exception to the refusal of the court below to so instruct the jury, if it appear that the defects of the plaintiff's case were afterwards supplied by the evidence offered by the defendant.
2. A general exception to the granting of prayers is irregular. The party objecting should except specially to the granting of each prayer.
3. So, too, with the charge; the unobjectionable parts should be segregated from that which is objectionable and the latter excepted to specially.
4. If a parent sues for the loss of services of a child by reason of injuries resulting from the defendant's negligence, contributory negligence on the part of the parent is a complete defence; but it is otherwise if the child sues by the parent or any other next friend.
5. What would be contributory negligence in an adult, may not be such in the case of a child of tender years; the caution required is according to the maturity and capacity of the child, and this is to be determined by the circumstances of the case.
6. The question whether the capacity of a child is such that he can be charged with contributory negligence is one of fact which must be determined by the jury.
7. Though the evidence of negligence may be slight, and though it may have affected the court differently from the way in which it affected the jury, the court may not feel at liberty to say that there was not sufficient evidence to go to the jury.
8. The respective obligations of street railway companies, and of persons, (including children) crossing the tracks of the company declared in the instructions given to the jury by the court below and approved of by this court.

### STATEMENT OF THE CASE.

The plaintiff, an infant of about seven years, brought this action by his father, as next friend, against the defendant, a street car company, to recover damages for injuries sustained by reason of being run over by one of the defendant's cars. At the trial, the jury rendered a verdict in favor of the plaintiff for \$5,000, and the case embodying in the record all the testimony, the substance of which is stated in the opinion, came to the General Term on a motion for a new trial on exceptions.

The first exception was to the refusal of the court to instruct the jury that upon the whole evidence offered in behalf of the plaintiff the plaintiff was not entitled to recover.

The second and third exceptions were not pressed. The fourth exception, containing the three prayers of the plaintiff, which were granted by the court, was in the form following:

"The plaintiff thereupon prayed the court to instruct the jury as follows:

"1. The law requires of the defendant the exercise of reasonable care and caution in running its cars over and across the streets in this city, in order to avoid injury to persons upon the streets; and if the defendant, or its agents or servants, by the exercise of reasonable care, could have prevented the injury to the plaintiff, then the plaintiff is entitled to recover, unless you should further find that the plaintiff was himself guilty of negligence contributing to his injury.

"But in considering the question of the plaintiff's negligence, he is only to be held responsible for the exercise of such judgment, prudence and discretion as is natural to and to be expected from a boy of his age.

"2. If the jury find from the evidence that the defendant, its agents or servants, by the exercise of reasonable and proper care, could have prevented the injury to the plaintiff, then in order to prevent liability, the burden of proof is upon the railroad company to prove that the plaintiff was guilty of failing to use such degree of ordinary care and prudence as would naturally be expected from a boy of his age, which contributed to his injury.

"3. If the jury find for the plaintiff, in estimating the damages, they are to consider the health and condition of the plaintiff before the injury complained of, as compared with his present condition in consequence of said injury, and whether the said injury is in its nature permanent, and how far it is calculated to disable the plaintiff from engaging in those industrial pursuits and employments for which, in the absence of such injury, he would be qualified; and also the physical and mental suffering to which he was subjected by reason of said injury, and to allow such damages as in the opinion of the jury will be a fair and just compensation for the injury which the plaintiff has sustained.

"And the court thereupon granted said prayers, and each of them; and to the granting of said prayers, and each of them, the defendant then and there, and before the jury retired, excepted, and prays the court to sign and seal this its fourth bill of exceptions;

which is done accordingly now for then this 13th day of January, A. D. 1883.

"ARTHUR MAC ARTHUR, [Seal.]  
"Justice."

The fifth exception was to the refusal of the court to grant the defendant's fourth prayer which was as follows:

"If the jury find from the testimony that, at the time of the accident described in the declaration, the plaintiff was a child seven years of age, and was allowed by his father, who sues as the next friend of said child, to play in the street in which the defendant's tracks are situated, and the said child ran in the way of car No. 50 in a manner which amounted to negligence, and in consequence thereof received the injury complained of, and that the driver, as soon as he perceived said child, endeavored to stop said car, but was unable to do so in time, and was not negligent in the management of said car, the plaintiff is not entitled to recover."

The sixth exception set out the judge's charge and concluded as follows:

"To which said instruction, and every part thereof, the defendant, by its attorney, then and there, and before the jury retired, excepted, and prays the court to sign and seal this its sixth bill of exceptions; which is done accordingly now for then," &c.

The charge of the court was as follows:

"The party injured in this case was a child seven years of age, and that is a circumstance which naturally affects the case, because the same degree of judgment, prudence and caution is not to be expected from so young a person as would be required from an older and maturer person. With regard to grown-up persons, they must be free from negligence in order to recover—that is called 'contributory negligence.' It is somewhat different in regard to a child. The law adapts itself to the condition and age of the party injured. In this case, if the child was exercising that degree of care that would be expected from one of that age, and was injured by the negligence of the defendant, he is entitled to recover.

"The liability here depends upon the circumstances of the case. I have been asked to instruct you as to the burden of proof. The burden of proof is rather an abstract proposition; but so far as the defendant is concerned, the law imposes upon the company with regard to a child the necessity of exonerating their conduct from negligence, and of showing that the child was guilty of that degree of negligence which will relieve them from responsibility. Now, I have no doubt that if this accident occurred from the negligence of the defendant, or its agent—and

when I speak of the defendant I speak of anything that is done by its agents, or suffered by its agents to be done—if the injury occurred through want of proper care and caution, the plaintiff would be entitled to recover, unless the defendant in addition shows that from the circumstances of the case the accident was inevitable, or that the child was not exercising that degree of care for which he was responsible as a child. If the accident was inevitable, the child must bear the burden of it; that is, if the proper care and prudence of the plaintiff could have prevented its occurrence, then the plaintiff would be responsible. So that, so far as the burden of proof is concerned, you will consider all the circumstances of the case, and if, upon the whole testimony, it appears to you satisfactorily that within the rules I have just laid down the defendant, or the company, has successfully sustained their part of the issue, they are entitled to your verdict.

"There are one or two particular features in the case to which my attention is called, and your attention is called by the instructions. I have stated, I think, fully the grounds upon which I think the plaintiff is entitled to recover, and the principles of law which he has claimed should be given to the jury in his written instructions. The defendant, however, requests me to state to you as matter of law, that if this child ran upon the track in such a sudden manner that by the exercise of proper caution and care there was not time to stop the cars or the horse, the company is not responsible. That is undoubtedly true, and I do not understand that principle to be controverted on the other side.

"The other point to which particular attention is directed is, if the boy was running after the car which was going north, and was in the act of stepping upon the rear platform, when he instantly abandoned it and got out upon the track before there was time to stop the car which was going in the opposite direction, that would be a complete defence here. And I think it would. Now, while a child is to be held responsible only for such care and caution as is suitable to its age, an act of that kind is a mischievous one; and while children are exempt from the responsibility of a grown-up person, they are still responsible for mischievous conduct; and if a child does an act of that kind, and in doing so, without the fault of the other side, receives an injury, it is an injury which the child incurs under circumstances which render the other party harmless so far as an action at law is concerned.

"Now, something has been said about these children playing on the street. Well, we

know that children do play upon the street, and it goes to illustrate the kind of capacity and judgment a child has; and when we see children playing upon the street, therefore, where there is no danger to apprehend, it looks just like an act that a child would do; it looks just like conduct that is common to most of children. When a railroad is running through one of the public thoroughfares of the city, it is the duty of parents to look after their children, and for their own sake to keep them as much as possible away from a playground upon the railroad; and the parent who neglects this duty incurs sometimes a fearful responsibility and exposes his own child to very great risks. Still, a railroad that runs through the public streets of the city has not the exclusive right to their occupancy and use. They have only the use of the street for the purposes of their road, and all the other citizens, including men, women and children, have a perfect right to use the street. They are required, however, to exercise such care and caution as will protect themselves from the use of the street by a machinery of this description, and they are not to run under the horses' feet or under the cars; they are called upon to exercise their sight and hearing and their powers of locomotion, and if they neglect in this respect they take the risk upon themselves; but you will bear in mind the qualification which I have just stated in this connection with regard to children. Therefore, while children are upon the street they are in the exercise to some extent of a legal right, and I would be very loath to lay down the proposition that children may not use the street for playing occasionally. As was stated by one of the counsel, it is very much the only place they have in close cities, although in this city such are the admirable arrangements—there are large circles and squares almost everywhere—that children can enjoy some freedom; and when they are permitted to roam upon the street they usually romp and become boisterous and acquire habits which perhaps children would be better without; but, after considering all these things as matters of social propriety, there is left the broad doctrine that all persons may occupy these streets subject of course to the exercise of caution, and subject to the other use to which the street is appropriated, and if they do that they are within the protection of the law. If, however, they do not exercise that degree of care which is imposed upon children in the case of an injury—or upon adult persons in the case of an injury—and come to grief, they must bear the consequences.

"Now, I think that I will give you just

what I have been saying to you on this topic in the place of the last instruction which has been asked for on the part of the defendant, and I think this disposes of all that is necessary for the court to say.

"Mr. MATTINGLY: Before your honor leaves that point I will ask your honor to state the correlative duty of the railroad company using the street. That they have to adapt their use to the habits of children.

"THE COURT: Well, I supposed that was implied. The streets have to be used by citizens, subject to the purposes for which they are occupied by the railroad company, and the railroad company must use it subject to the right of the citizens.

"And this brings us to the question of damages—a question that is left, generally, to the jury, subject to some slight instructions from the court. In this case no vindictive damages are claimed, but simply the actual damage which has been sustained. There is no doubt that this child has suffered a very severe injury, perhaps one that will affect his condition indefinitely, and, perhaps, through life. That he must have suffered considerably is quite evident from the nature of the injury. You will consider the case and give him such damages as are proper in view of the circumstances and the injury. You will bear in mind that this is only a horse railway; that it is not one of those gigantic corporations that wheel ponderous mechanism through our streets, but it is run by power that is quite controllable—by horse power—and that it is so very controllable, is evident from the fact, which does not appear to be disputed in this case, that the car was stopped before it had time to pass the length between the two wheels—almost instantly. And, upon the whole, you are not expected to give damages against this company by way of making an example of them; but you are just to compensate the plaintiff in a reasonable amount. On that subject I simply ask you, gentlemen, to be reasonable in regard to your verdict, because it is only reasonable verdicts, after all, that are satisfactory; and sometimes when they are excessive they not only create dissatisfaction, but embarrassment in the subsequent proceedings in the case."

"Mr. WILSON: Your honor omitted, unintentionally, a qualification: whether or not they are to award any damages depends upon whether or not they find the defendant was guilty of negligence.

"THE COURT: Oh, yes, I imagined that you find in favor of the plaintiff. If you find that

the railroad company were not at fault, you will return a verdict for the defendant.

"You may retire, gentlemen.

"Mr. WILSON: I except to the charge and every part of it."

WM. F. MATTINGLY and FRANK T. BROWNING for plaintiff.

NATHANIEL WILSON for defendant.

Mr. Justice COX delivered the opinion of the court.

This was an action by the plaintiff, an infant of tender years, by his father, as next friend, to recover damages for an injury suffered by being thrown down and run over by a car of the Metropolitan railroad line. At the trial, after the testimony for the plaintiff was closed, counsel for the defence asked the court to instruct the jury to render a verdict for the defendant, on the ground that the evidence did not make out a *prima facie* case of negligence on the part of the defendant company. The instruction was refused, and that is the subject of the first exception. In the course of the trial several other exceptions were taken, one or two to the admission or exclusion of evidence; one to the rejection of a prayer for instructions by defendant; one to the granting of a prayer by the plaintiff for instructions; and finally one to the charge; but the only one on which stress was laid in the argument was the first, and that brought before the court simply the question whether the evidence introduced into the case was sufficient to make out a *prima facie* case to go to the jury, and whether the court ought not to have told the jury that there was not sufficient evidence upon which to find a verdict for the plaintiff. It should be remarked here that, even if the evidence for the plaintiff is, of itself, insufficient to make out a *prima facie* case, yet if any defect in it is supplied by the evidence offered afterwards by the defendant, the plaintiff is entitled to the benefit of that, and the error of the court, if there was error, in refusing an instruction such as was asked in this case, would thus be redressed by the defendant's own act. Therefore, the question can be considered fairly only in the light of all the evidence introduced into the case, and it must appear that the whole of the evidence offered by both sides did not present sufficient facts to make a *prima facie* case to go to the jury, before the decision of the court can be reversed for the refusal to give the instruction prayed. Now, in this case, the evidence on the part of the plaintiff was, in substance, that on the occasion in question a car, numbered 50, belong-

ing to this defendant, had just turned from Missouri avenue into Four-and-a-half street, to go down towards the Arsenal, and, about halfway down that square, met, coming up, car number 15; that the plaintiff, a child of about 7 years of age, undertook to cross the track, and did cross, before car No. 50, but, through some accident, struck against the horses of car No. 15, which was coming up, and, by that contact or collision with those horses, was thrown between the horse drawing car No. 50 and the front axle of the car; that that wheel passed over his legs, and that the driver arrested the car barely in time to prevent the hind wheels also from going over him. The testimony tended clearly to show that car No. 15, which was running north, was going at a very rapid speed, in order to make up lost time, and that car No. 50 was going slowly, but that the driver was not looking ahead but was conversing with some one in the car, and, consequently, that his face was turned around toward the car. It further appears that as soon as the boy fell and the car ran over him, the driver of car No. 15 exclaimed to the other one: "That's what you get by not looking out."

Perhaps the only facts material to the case contributed by the evidence for the defense (of which facts the plaintiff is entitled to avail himself) are, that this place had been a sort of a play-ground for boys; that they had been in the habit of jumping on and off the cars, and that on this occasion the two drivers both saw the boys playing in the street. One of the drivers says he saw the boys but did not know whether they were playing or not.

Now, it is argued on the part of the plaintiff, that the driver of car No. 50 was negligent in not keeping a proper lookout. Further, a witness for the plaintiff testifies that he gave the alarm as soon as he saw the boy fall, and attracted the attention of the driver to the boy, so that the driver at once checked the car and prevented the hind wheels from running over him; from which it is argued that if the driver had been keeping a proper lookout he would have seen the boy in time to prevent even the fore-wheel from running over him. It is claimed also that the driver of car No. 15, coming up, was negligent in travelling at an unusual speed, at a point where he would meet another car, and where there was more than ordinary danger because of the presence of these boys playing, he having full knowledge that they were in the habit of playing there, and that children were present there on this particular occasion. The question is, whether these facts constitute sufficient evidence of negli-

gence on the part of the defendant to go to the jury. Two cases somewhat analogous to this one have been cited. One of them is that of *Railroad Company v. Gladmon*, 14 Wall., 401, in which I was counsel myself. A car was running along Bridge street, while some boys were playing there, and one of them suddenly undertook to cross, and was thrown down and had his knee-pan torn off by the wheel. One witness, Mr. Hill, testified that the driver was not looking forward, but was conversing with some one alongside of him, and that if he had been keeping a proper lookout he could have checked the car in time. It did not seem to have occurred to the court in that case, any more than in this, that there was not sufficient evidence to make out a *prima facie* case. The case went to the jury, and they rendered a verdict for \$9,000. I forget whether it was attempted to have the verdict set aside on the ground of insufficient evidence. At all events it was not done.

Another case cited was that of *R. R. Co. v. Stout* 17 Wallace, 657. In that case it appeared that the railroad company which was sued (the Sioux City & Pacific Railroad Co.), owned a turn-table which was situated on its own premises entirely, but was unenclosed, and adjacent to two public roads. A little child wandered away from its home, three-quarters of a mile distant, strayed into this place, got to playing on the turn-table, and had his foot crushed. The company was sued and certain instructions were asked, but the question really presented was whether there was sufficient evidence from which the jury could infer negligence on the part of the defendant. It appeared from the evidence that children had been in the habit of playing there, and had been several times warned off by the railroad employees. The court said that the mere fact that children had played there before was sufficient to give notice to the company that there was danger of their coming there again, and the fact that an injury did actually happen there was sufficient evidence to go to the jury that the condition of the turn-table was dangerous; that these facts constituted notice to the company that the place was dangerous, and that there was a possibility of children being injured there, and that this, with the fact that the child in question was injured, was enough to make a case to go to the jury. The court say: "That the turn-table was a dangerous machine, which would be likely to cause injury to children who resorted to it, might fairly be inferred from the injury which actually occurred to the plaintiff. There was the same liability to

injury to him, and no greater, that existed with reference to all children. When the jury learned from the evidence that he had suffered a serious injury by his foot being caught between the fixed rail of the road-bed and the turning rail of the table, they were justified in believing that there was a probability of the occurrence of such accidents. So, in looking at the remoteness of the machine from inhabited dwellings, when it was proved to the jury that several boys from the hamlet were at play there on this occasion, and that they had been at play upon the turn-table on other occasions, within the observation and to the knowledge of the employees of the defendant, the jury were justified in believing that children would probably resort to it, and that the defendant should have anticipated that such would be the case."

It may be said in this case, by parity of reasoning, that the fact that children had been in the habit of playing at this identical spot, was a warning to the agents of this defendant, that children might on other occasions be found playing there, as they were on the occasion in question, and that the fact that an injury *did* happen from the meeting of two cars at that point was sufficient evidence that every occasion of the meeting of cars at this point where children were in the habit of playing was an occasion of danger. In the case of the *Railroad Co. v. Stout*, the court say: "The evidence is not strong, and the negligence is slight; but we are not able to say that there is not evidence sufficient to justify the verdict. We are not called upon to weigh, to measure, to balance the evidence, or to ascertain how we should have decided if acting as jurors." We think we must entertain the same view in reference to this case. Though the evidence of negligence may be slight, and though it might have affected us differently from the way in which it affected the jury, we cannot feel at liberty to say that there was not sufficient evidence to go to the jury. If this had been the case of an adult we should have little difficulty in holding that there was sufficient contributory negligence on his part to defeat a recovery; but we cannot say so in regard to a minor child of tender years. There is hardly any set of circumstances which a court can say, as matter of law, amount to contributory negligence on the part of such a plaintiff as that. It is always finally, a question of fact whether the capacity of the child is such that he can be charged with contributory negligence, and as a question of fact, it must necessarily be submitted to the jury for determination.

There was no argument addressed to the

court upon the other exceptions, and it is hardly necessary that I should discuss them at any length; but I will briefly notice one or two of them. There were three prayers asked on the part of the plaintiff, none of which seem to us to be objectionable. The counsel for the defence, apparently as a matter of precaution, excepted generally to the granting of those prayers. The exception itself is not exactly regular, because it does not except specially to the granting of each prayer. However, I do not think it is necessary to notice those further.

The defendant asked four instructions, one of which was refused. The one refused was as follows:

"If the jury find from the testimony that, at the time of the accident described in the declaration, the plaintiff was a child seven years of age, and was allowed by his father, who sues as the next friend of said child, to play in the street in which the defendant's tracks are situated, and the said child ran in the way of car No. 50 in a manner which amounted to negligence, and in consequence thereof received the injury complained of, and that the driver, as soon as he perceived said child, endeavored to stop said car, but was unable to do so in time, and was not negligent in the management of said car, the plaintiff is not entitled to recover."

That embodies two propositions. The first is that if the parent of the child was negligent, that negligence is to be charged to the plaintiff, and that that, with other facts, is to be considered by the jury as a defence. Now we do not understand the law to be so. If a parent sues for the loss of services, contributory negligence on the part of the parent is a complete defence; but if the child sues, by the parent or any other next friend, it is no defence.

The next proposition is decidedly faulty. It puts the question of the child's negligence to the jury and states that the child's negligence is to be estimated without reference to his capacity. The Supreme Court held in the Gladmon case that the jury must be instructed that the negligence imputable to a child must be estimated with reference to his tender years; that "the caution required is according to the maturity and capacity of the child, and this is to be determined in each case by the circumstances of that case." This part of the instruction, omitting that qualification, is therefore faulty, under the ruling of the Supreme Court.

There was a charge by the court, which occupies some four pages of the record, and the counsel for the defence except generally

to it in every part. This is faulty in form; because, while there is a portion of the charge that was objected to, there are other portions wholly unobjectionable, and a general exception which does not segregate the objectionable part is faulty in form. But we may say that even the part complained of is correct.

On these grounds, the motion for a new trial on the exceptions will have to be overruled.

## United States Court of Claims.

### JAMES O. NIXON *vs.* THE UNITED STATES

Under Revised Statutes, § 3220, which authorizes the Commissioner of Internal Revenue, to "re-pay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court for any internal taxes collected by him with the cost and expenses of suit," the Commissioner may make the allowance directly to the judgment creditor. Such has been the practice of the Internal Revenue Bureau, and it is reasonable and proper, and should be upheld.

RICHARDSON, J., delivered the opinion of the court.

This is an action upon the allowance by the Commissioner of Internal Revenue under the provisions of section 3220 of the Revised Statutes. It has been repeatedly held, in the language of the Supreme Court, that such an allowance is "equivalent to an account stated between private parties, which is good until impeached for fraud or mistake," and is an adjudication by the commissioner upon which the government's "liability is complete until in some appropriate form it is impeached." (*Kaufman's Case*, 11 Ct. Cls. R., 659, affirmed on appeal, 96 U. S., 567; *Bank of Greencastle Case*, 15 Ct. Cls. R., 225; *Real Estate Savings Bank Case*, 16 Ct. Cls. R., 335, affirmed on appeal, 104 U. S., 728; *Barrett & Co. Case*, 16 Ct. Cls. R., 515, affirmed on appeal; 104 U. S., 728; *Dunnegan's Case*, 17 Ct. Cls. R. 247.)

Exactly what are all the kinds of mistakes which are sufficient to impeach such an allowance has not been determined. It is clear, however, that a mistake of jurisdiction made by the commissioner would avoid his final decision, and it is equally clear that a mistake of judgment or discretion, while acting within the scope of his jurisdiction, cannot be set up and inquired into to impeach the conclusion to which he arrives. The rule laid down by the Supreme Court in *Wilcox v. Jackson*, 13 Peters 511, in relation to a similar question seems to cover the ground on that point.

"The principle upon this subject is con-

cisely and accurately stated by this Court in the case of *Elliott et al. v. Peirsol et al.*, 1 Peters, 340, in these words: 'Where a court has jurisdiction it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it acts without authority its judgments and orders are regarded as nullities. They are not voidable, but simply void.'

On the part of the defendants it is urged that because the claimant, before suit brought, had appealed to the commissioner for refund of this very tax, for the recovery of which his judgment was subsequently obtained, and the commissioner had rejected his claim, therefore the commissioner's power was exhausted, and he had no further authority in the matter, however it might arise, and could not allow payment of a judgment for the recovery of the amount of such tax. This position is untenable for two reasons:

First. An appeal to the commissioner for refund was a condition precedent to the claimant's right to bring suit at all, as provided in Revised Statutes as follows:

"SEC. 2226. No suit shall be maintained in any court for the recovery of an internal tax, alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or of any sums alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section."

It would be an unreasonable construction to give to these provisions of the statutes, that the proceedings which Congress requires to be had before suit can be brought, shall be held to be a bar to the relief afforded by other provisions to officers and creditors after judgment recovered in such suits; in other words, that a compliance with the condition precedent to bringing suit shall operate to defeat the enforcement against the United States of the judgment recovered therein. We cannot adopt such a construction.

Second. This allowance is for the repayment of a judgment recovered against a col-

lector of taxes under the latter clauses, (before the proviso) of section 3220 of the Revised Statutes, and not for the refund of taxes erroneously or illegally assessed or collected under the first clause of the section. So the action of the commissioner was not in both cases upon the same subject matter, as his last decision was founded upon a case different from that involved in his first decision.

Another objection is that certain public officers, the Secretary of the Treasury, the Solicitor of the Treasury, and the Attorney-General were not notified of the pendency of the claimant's suit before judgment. This objection is futile, since neither section 3220 of the Revised Statutes nor any other law requires such notice, as a condition precedent to the commissioner's action. It does appear, however, by the findings that the commissioner was notified and was informed of the nature and purpose of the suit. This was a matter wholly for the consideration of that officer. He would not have been bound to make the allowance if all the public officers mentioned had been notified, and had appeared and defended the suit; and, on the other hand, if he saw fit in the exercise of that sound discretion to which Congress has entrusted the power, he might allow the repayment of the amount of the judgment, without previous notice of the pendency of the suit to himself or to any other officer of the Government.

It is further objected on the part of the defendants that the commissioner of Internal Revenue has no authority under section 3220 of the Revised Statutes to allow the repayment of the amount of a judgment directly to the judgment creditor, and that he can make an allowance thereunder only to the collector or other officer himself, after he has paid the judgment recovered against him. That might perhaps be so if the business of the commissioner were required to be conducted with all the strict and technical formalities applicable to actions at law, or were in fact generally so conducted. But the findings show what perhaps might be judicially taken notice of, upon suggestion of counsel, as the course of public business, that it has been the uniform practice of the commissioner and the Secretary of the Treasury, from the first enactment of the refunding statute to the present time, to make allowance in such cases to the judgment creditor, and not to require the collector, or other judgment debtor, first to pay the same out of his own money, and then himself to apply for repayment from the public Treasury.

The practice is a useful, reasonable, and

proper one and ought to be upheld. It would be impracticable, and often impossible for a collector or other officer to obtain money sufficient to pay such judgments against him, and it would be of no use except to meet a mere technicality. He might be subjected to great hardship, loss, and even bankruptcy if such judgments were required to be enforced against his property before he could obtain the beneficent relief accorded to him by statute. We so held in *Dunnegan's Case* (17 Ct. Cls., R., 247.)

Unless there were some reasons known to the commissioner why an officer should be made to pay the judgment himself, it would be a mere idle circuitry, not favored in law, to require the money, which the commissioner intended to refund, to pass to the judgment creditor through the hands of the officer. *Circuitus est evitandus*. That there were no such reasons in this case is shown by the fact that the commissioner made the allowance to the judgment creditor. His unimpeached decision in that matter ought to be conclusive.

Besides it is by no means a perversion of the meaning of the language of the statute to hold that payment to the judgment creditor in such case is practically and in legal effect payment to the judgment debtor, since it relieves the latter from his liability, and is therefore to his use and for his benefit. At the same time it effectuates payment to the very person to whom the money is actually due, and ultimately payable, and thus secures the accomplishment of the object of the statute, and prevents the remedy of the judgment debtor from being lost or destroyed through the inaction or pecuniary inability of the defendants' revenue officers to do an act which does not affect the merits of the case as against the United States. *Benedicta est exposito quando res redimitur a destructione*.

The judgment of the court is that the claimant recovers the sum of \$1,092.55

#### NOTES OF RECENT DECISIONS.

**Homestead: how extinguished or lost.**—There are only two modes by which the homestead right or estate may be extinguished. First, by a release, waiver or conveyance in writing, subscribed by the householder and his wife, or her husband, if he or she has one, and acknowledged in the same manner as conveyances of real estate are required to be acknowledged; or, second, by conveyance of the premises, with abandonment or giving up of possession.

**Same: cannot be released by ante-nuptial contract.**—A widow's homestead right cannot be barred by an ante-nuptial contract to that

effect. Such contract may bar dower, but not the right to the homestead, even though the widow may not have any issue of the marriage. The provision securing a homestead being a matter of public concern, cannot be abrogated by private contract. [*George W. McMahon et al. v. Margaret A. McMahon*. Supreme Court of Illinois.]

**Patents: infringement; damages; Partial infringement and full damages.**—Where only one of six claims of a patent was infringed,

it is error for the master to allow as damages the sum complainant was accustomed to charge as a license fee for the use of his invention. [*Wooster v. Simonson*. U. S. C. C., S. D. New York.]

**Trial: Misconduct of Jurors; Use of intoxicating liquors; attending theatre.**—The use of intoxicating liquors by jurors while engaged in the consideration of a case will not vitiate their verdict unless it is affirmatively shown that the party complaining has been prejudiced by the conduct of the jury. The same rule is to be applied in reference to the action of a jury in attending a theatre by permission of the court while a trial was pending. [*Jones v. The People*. S. C. of Colorado.]

**Contract: substitution of material; Custom.**—A, a cabinet maker, agreed in writing to build for B a walnut counter. B found that the top and door-panels were whitewood stained to look like walnut. Held, in an action by B for damages, that A could not show a custom that whitewood was so used by manufacturers in making walnut counters for customers. [*Greenstine v. Borchard*. S. C. of Mich.]

**Fire Insurance; insurable interest; goods sold and delivered.**—Some hogsheads of tobacco, which had been sold and delivered, were left in the warehouse of the vendor, who had open policies of insurance for \$8,000 upon tobacco "owned or held in trust, or on commission, or sold and not delivered," and were burned with other tobacco of the vendor by the destruction of his warehouse. The loss of the vendor was \$10,000. The purchaser sued the vendor and the insurance companies for the loss. Held, That as the tobacco had been sold and delivered the purchaser had no interest in the policies. [*Lockhart v. Cooper*. S. C. of North Carolina.]

**Stock Transactions: gambling.**—When the magnitude of purchases of stock made by a broker is out of all proportion to the money advanced by the principal to pay therefor, the transaction is stamped with the character of



a gambling enterprise, and the law will not enforce payment amongst the parties thereto. [Patterson's Appeal. S. C. of Penn.]

*Effect of Conveyance by Attorney without Consideration.*—If one authorized by power of attorney to sell and convey lands of another, convey the same without consideration, the owner of the lands may treat such conveyance as a nullity. *Mead v. Brothers*, 28 Wis., 699.

Such owner has, therefore, an adequate remedy at law by action to recover the possession of the lands, and cannot maintain an equitable action to have the grantee in such conveyance declared a trustee and to enforce a re-conveyance. [Campbell v. Campbell. S. C. of Wisconsin.]

The statute of limitations bars the claim of an attorney as it does the claims of other persons when the services may be measured in a similar way as the services of others. It does not begin to run against the claim for conducting a suit until the end of his services in that case; nor would it against his claim for other special services until it was finished.

One member of a partnership, to whom the others have transferred their interest in the partnership property and claims, cannot sue and recover, a debt which was owing to the firm, in his own name. [Mosgrove and Pollock, administrators, v. Golden.]

A judgment was held by D., the defendant, in a prosecution for fornication against O., the defendant in the court below. O. was an attorney-at-law, and, on a rule to open judgment, alleged that D. agreed to give him a contingent fee of \$2,000 in order to settle the matter so as to avoid prosecution. A court of law will not enforce such a contract. The stifling of a prosecution for a criminal offense, even where it is a misdemeanor, and of such a character as to be within the control of the parties, is not a proper subject of a bargain for a fee. Contracts which have for their subject matter an interference with the creation of laws or their due enforcement, are against public policy, and therefore void. *Hatzfield v. Gellden*, 7 Watts, 152; *Cliffinger v. Hefbaugh*, 5 W. & S., 315; *Bowman v. Coffroth*, 9 P. F. Sm., 19, cited. [Ormerod v. Dearman. S. C. of Penn. Error to Tioga County.]

*Homestead: improvidence; second homestead.*—A debtor who has received and squandered one homestead cannot as against creditors claim and appropriate another. [Oppenheimer v. Howell. S. C. of App. of Va.]

*Contract: for commissions; purchasers found.*—Where one authorized to sell wood on

commission produces customers ready and willing to purchase, he is entitled to commissions, although the principal refuse to deliver the wood. It is not necessary that the agent's contracts with the customers should be in writing so as to bind them under the statute of frauds.

*Agency: revocation.*—After revocation of authority, the revocation is a perpetual notice to the agent not to act for the principal.

*Contract: for commissions; Customary charge.*—Where the agent claims that there was an express contract as to the percentage of his commissions, which is denied by the principal, evidence of customary commissions on such sales should not be rejected. [Kelly v. Phelps. S. C. of Wisconsin.]

*Criminal Procedure; continuance of trial through legal holiday; discretion.*—A statute of the State made February 22d, the birthday of Washington, a public holiday, and prescribed that no public business, except in case of necessity, should be transacted on that day. The defendant was indicted for murder, and his trial was continued through the 22d of February, a verdict being rendered on the 23rd inst. Held, That the trial judge was necessarily the judge of the necessity for continuing the trial, and that such a continuance did not constitute a mistrial. [State v. Sorenson. Dis. Ct. of Ramsey County, Minn.]

IN olden times, when they hanged witches, it was considered, in a double sense, *neckromancy*.

A FUGITIVE from justice boasted that he was so well liked by all who knew him that he never left any place without a reward being offered for his return.

"PRISONER, how old are you?" "Twenty-two, your Honor." "Twenty-two? Your papers make out you were born twenty-three years ago." "So I was, but I spent one year in prison, and I don't count that—it was lost time."

AMONG the professional reminiscences of Daniel O'Connell, when at the Irish bar, was the following unique instance of a client's gratitude. He had obtained an acquittal, and the fellow, in the ecstasy of his joy, exclaimed: "Och, counselor, I've no way here to show your honor my gratitude, but I wisht I saw you knocked down in my own parish, and maybe I wouldn't bring a faction to the rescue."

## The Courts.

### EQUITY COURT.—Justice James.

JULY 6, 1883.

Barry et al. v. Clark et al. Guardian ad litem appointed.

Alley v. Quinter. Specific performance decreed.

Boys v. Boys. Rule to show cause.

Bradley et al. v. Reese et al. Decree reforming deed.

JULY 7, 1883.

Waggaman v. Waggaman. Referred to auditor.

Dallas v. Dallas et al. Decree for sale.

Richardson v. Richardson. Commission to take testimony.

Merriman v. Merriman. Referred to take testimony.

Grimes v. Smith et al. Sale ratified and distribution.

Kinsolving v. Johnson et al. Decree pro confesso and publication.

JULY 9, 1883.

Nickerson v. Nickerson. Argued and submitted.

Shoemaker v. Campbell. Decision reserved.

Mackall et al. v. Mackall et al. Question submitted by examiner.

JULY 10, 1883.

Browning v. Grant. Injunction denied and order discharged.

Coombs v. Coombs. Alimony of \$35 allowed.

Shoemaker et al. v. Campbell. Trustee authorized to accept offer.

Rosenberg v. Rosenberg. Divorce granted.

Oertley v. Oertley et al. Trustee authorized to accept offer.

Kappler v. Kappler. Order to take testimony. Holmead et al. v. Eslin et al. Referred to auditor.

Bell v. Wilkinson et al. Trustee bond approved.

Shomo v. Shomo. Divorce granted.

Davis v. Davis. Same.

Worthington et al. v. Randall. Referred to special auditor.

Eckels v. Barrett et al. Trustee's report ratified.

JULY 11, 1883.

Farley v. Green et al. Certified to General Term.

Mut. Benefit Life Ins. Co. v. Post et al. Order to pay money into court.

Hanson et al. v. Stephenson et al. Trustee ordered to collect drawback.

Williams v. Williams et al. Rule to show cause.

Yates et al. v. Arden et al. Trustee to convey.

Waggaman v. Waggaman et al. Decree for sale.

Ramsey v. Leib et al. Auditor's report confirmed.

Taylor v. Ryan et al. Reference rescinded.

JULY 12, 1883.

Mackall et al. v. Mackall et al. Time to take testimony extended.

Bell v. Wilkinson. Time to receive offer extended.

Shoemaker v. Shoemaker. Trustee's report ratified.

Conradis v. Walker et al. Restraining order granted.

Williams v. Williams. Rule discharged.

McCarthy v. O'Brien et al. Guardian ad litem appointed and referred to auditor.

Byrns v. Berry et al. Decree settling estate, &c.

Downham et al. v. Kelly. Rule on trustee.

Brown v. Butterfield. Bills dismissed.

Birney et al. v. Robbins et al. Order to pay rent into court.

Stindo v. West. Decree for injunction.

### CIRCUIT COURT.—Justice Mac Arthur.

JUNE 25, 1883.

Smith v. Holladay. Verdict for defendant.

JUNE 29, 1883.

Shipman v. Magarity. Verdict for plaintiff for 1 cent damages.

Burnett v. Church et al. Leave to amend declaration. Juror withdrawn.

Cook v. O'Neal. Judgment by default.

Potomac Terra Cotta Co. v. Kelly et al. Two cases. Judgment on award.

Smith v. Waddey. Judgment affirmed.

Hopkins v. District of Columbia. Bill of exceptions.

Clark v. District of Columbia. Same.

Hurley v. Joseph. Motion for new trial overruled.

McCullough v. Groff. Same.

Shipman v. Magarity. Same.

McGraw v. McGraw. Same.

O'Day v. Vansant. Same.

Tolman v. Phelps. Motion for new trial overruled. Bill of exceptions signed.

Justh v. Holladay. Same.

Sherwood et ux. v. District of Columbia. Same.

Brown v. Clark. Same.

Murshelmer & Co. v. Adams Express Co. Motion to consolidate overruled.

Riverside Print Co. v. Snelbaker. Motion for judgment granted.

Bower v. McNally. Motion for judgment overruled.

Winman v. Goodall. Motion to set aside judgment granted on conditions.

Solomon v. Galligher et al. Motion to strike out demurrer overruled.

Miller v. Miller et al. Motion to quash attachment granted. Appealed.

Wallach v. Chesley et al. Motion for judgment for costs granted.

Harris et al. v. Dammann. Motion for order returning goods overruled.

Reichenbach v. Bond, garnishee. Motion for specific answer overruled.

Hine v. Magarity. Motion to quash attachment by garnishee overruled.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JULY 13, 1883.

24606. James Berry v. John Sullivan. Damages, \$1,000. Pliffs attys, Smith and Orlukshank.

24601. Bernard Murphy v. Jane Walsh. Account, \$250. Pliffs attys, Hine & Thomas.

JULY 14, 1883.

24602. Bainbridge H. Webb v. William B. Moses. Trovers, \$3,000. Pliffs attys, Ross & Dean.

24603. The United States v. Selden N. Clark. Bond, \$1,000. Pliffs atty, Geo. B. Oorkhill.

24604. Same v. Same. Bond, \$50,000. Pliffs atty, same.

24605. Elizabeth Pierce et al. v. Augustus Jacobs. Ejectment. Pliffs attys, Worthington & Heald.

24606. Edward Hayes et al. v. Edward H. Brown. Ejectment. Pliffs attys, same.

24607. Same v. Timothy Ragan et al. Ejectment. Pliffs attys, same.

24608. Elizabeth Pierce v. Albert O. Janin et al. Ejectment. Pliffs attys, same.

24609. Edward Hayes et al. v. Albert O. Janin et al. Ejectment. Piffs attys, same.  
 24610. Elizabeth Pierce et al. v. William E. Thomas. Ejectment Piffs attys, same.  
 24611. Same v. Charles Pritchard. Ejectment. Piffs attys, same.  
 24612. Same v. John L. Schaffert, jr. Ejectment. Piffs attys, same.  
 24613. Same v. William Kearney. Ejectment. Piffs attys, same.  
 24614. Same v. William W. Metcalf. Ejectment. Piffs attys, same.  
 24615. Joseph C. G. Kennedy et al. v. John J. Daly. Bond, \$500. Piffs atty, F. T. Browning.  
 24616. George L. Sheriff v. The Washington Steamboat Co. Damages, \$3,500. Piffs attys, Hine & Thomas.  
 24617. Isabella Dupier v. Clayton McMichael. Damages, \$4,400. Piffs atty, P. P.  
 24618. Barber & Ross v. William E. Howe. Account, \$63.18. Piffs atty, A. B. Duvall.

JULY 16, 1883

24619. William T. Bailey v. Clayton McMichael. Replevin. Piffs atty J. St. O. Brookes.  
 24620. John A. Raff v. Charles J. Fanning. Appeal. Defs atts, Riddle, Davis & Padgett.

JULY 17, 1883.

24621. Charles B. Gropley et al v. Creed Turner. Note, \$67.33. Piffs atty, F. W. Jones.  
 24622. Abraham Fisher v. Olafson McMichael. Damages, \$5,000. Piffs attys, L. Tobriner.

## IN EQUITY.—New Smiths.

JULY 13, 1883.

8639. Horatio Browning et al. v. William R. Hunt et al. Creditors' bill. Com. sols, Hine & Thomas.  
 8640. Thomas B. Cersley v. Lucy J. Cersley. For divorce. Com. sol., J. A. Smith.  
 8641. Isaac Frazer et al. v. Solomon J. Fague et al. For release. Com. sol., I. Williamson.

JULY 14, 1883.

8642. Charles P. Phelps et al. v. Hester A. Tippet et al. To sell. Com. sol., O. F. Rowe.  
 8643. Enoch Totten et al. v. Levi J. Bryant. To sell. Com. sols., Totten & Browning.  
 8644. Alice Chick v. William W. Chick. For divorce. Com. sol. R. Ohristy.  
 8645. Mary Baldwin v. Lorin M. Saunders et al. To appoint trustee. Com. sols., Hagner & Maddox.

JULY 16, 1883.

8646. Thomas W. Smith v. Chas. White et al. To subject lot 9, square 113, to pay judgment. Com. sol, L. G. Hine.

JULY 17, 1883.

8647. Francis Sacchie v. Wm. McE. Dye. Injunction. Com. sol, W. P. Bell. Defs sol., A. G. Riddle.

## PROBATE COURT.—Justice James.

JUNE 23, 1883.

Estate of Noble Young; will ordered to be returned for deposition of subscribing witness.

Estate of Ezekiel Hughes; will admitted to probate and letters granted.

John K. Brown, guardian; appointed and bonded.

Chas. T. Chapman, guardian; same.

Eldra J. Essex, guardian; same.

Estate of Wm. Barnes; inventory returned by administratrix.

Estate of Geo. A. Morrison; will admitted to probate and letters granted.

Estate of James Ready and John Bligh, guardian; point raised as to the claim of guardian whether the issue raised should be tried by jury.

Estate of Thos. McDonald; final account of executors.

Lettie L. McKinzie, guardian; first account.

Carolina Scholl, guardian; fifth account.

Estate of Frederick W. Seilhausen; first account of executors.

Margaret J. Watkins, guardian; first account.

Estate of Mason Noble; first account of administrator.

JUNE 23, 1883.

Estate of Robert E. Thompson; will admitted to probate; letters granted to one of the executors; bonded and qualified Wm. Middleton, guardian; bonded.

Estate of John W. Hagan; administrator qualified.

JUNE 26, 1883.

Estate of James Croes; administrator bonded and qualified.

Will of Jacob L. Dorwart; proved by third witness.

Estate of Wm. Lilley; party partially bonded.

JUNE 26, 1883.

Will of Geo. F. O. Drescher; filed.

Thomas E. Waggaman, guardian; qualified.

August Peterson, guardian; bonded.

Estate of Belinda Kondrup; executor bonded.

JUNE 27, 1883.

Estate of John G. Killian; administrator w. a., bonded and letters granted.

Estate of Emily Johnson; executor partly bonded.

Estate of Belinda Kondrup; executor qualified and letters issued.

August Peterson, guardian; qualified.

Estate of Geo. A. Morrison; administrator c. t. a., bonded and qualified.

Will of Francis Dalton; filed.

Estate of Sarah Hammond; administrator instructed in relation to note.

Estate of John G. Killian; will admitted to probate.

Estate of Hayward M. Hutchinson; appraiser appointed. JUNE 28, 1883.

Estate of Noble Young; receipt of commissioner at Sacketts Harbor, for registered letter.

Estate of Geo. L. Hammeken; report of administrator filed.

Estate of Sarah W. Parris; inventory returned by executor.

Estate of W. Lilley; inventory returned by administrator.

Estate of Emma B. Thomson; exceptions to executors' account filed.

Estate of Ezekiel Hughes; proof of publication filed; administrator c. t. a., qualified.

Estate of Edward E. Anderson; party qualified by completing bond.

Estate of Noble Young; will returned; admitted to probate and letters granted.

Estate of Thomas L. Tullock; administrator bonded and qualified.

Miranda Tullock, guardian; appointed and bonded.

Estate of Charles Draeger; administratrix appointed and bonded.

Estate of Samuel T. Ellis; administratrix appointed and bonded.

Estate of Lawrence R. Byrne; administrator appointed and bonded.

Estate of Wm. Lilley; sale ordered at public auction.

Estate of Geo. A. Morrison; administrator authorized to deposit R. R. bonds.

Estate of John Coyn; executor renounces his right to administer.

Estate of Charles Ewing; petition for administration filed.

Estate of Geo. F. C. Drescher; same.

Estate of Margaret A. Randall; motion to dismit caveat.

Estate of Matthew H. Carpenter; petition for sale of records, &c.

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

SARAH M. STARR, Executrix.  
 HAGNER & MADDOX, Solicitors. 29-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence R. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.

CHARLES E. OREOY, Administrator. 29-3

## THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CHARLES WALTER, Executor.  
 CHAS. A. WALTER, Solicitor. 29-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 HENRY E. DAVIS, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS. W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1883.

C. F. ROWE, Solicitor. ALBERT HARPER. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

29-3 DANIEL O'O. CALLAGHAN, Administrator, 435 7th street, n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of July, 1883.**

WILLIAM W. HUDSON

v. CATHARINE HUDSON.

No. 8636. Eq. Dock 23.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, Catherine Hudson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 29-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of June, 1883.**

JOHN P. FRANKLIN, Executor, &c. } No. 5618. Equity.

v. VIRGINIA YOUNG ET AL.

On motion of the plaintiffs, by Messrs. Bradley & Duvall, his Solicitors, it is ordered that the defendant, Virginia Young, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 29-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix.  
W. W. BOARMAN, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix.  
LEON TOBRINER, Solicitor. 29-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN HOCKMEYER ET AL.

v. LEOPOLD NEUMEYER ET AL.

No. 8,623. Eq. Doc. 23.

On motion of the plaintiff, by their solicitor, Messrs. Warren O. Stone and Fred. W. Jones, it is ordered that the defendant, James Henry Neumeyer, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.  
WARREN O. STONE and FRED. W. JONES, Solicitors for Complainants. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Susan S. March St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a.  
ROBERT CHRISTY, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jane E. W. Kelley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a.  
JAMES H. SMITH, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB,  
CHAS. J. LUSK,  
Administrators. 29-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES SCHROTH ET AL. }

No. 8811. Eq. Doc. 22.

v. AMELIA MILLER.

Judson T. Cull and John A. Clarke, trustees herein, having reported sales of parts of lots 13 and 14, in square No. 642, (the same being more fully described in said report), to Nicholas Nitter and George Juenemann, for \$485 and \$200 respectively:

It is, this 19th day of July, 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 9th day of August, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 28-3 R. J. MEIGS, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8296, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 24th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$500 to Robert E. Frey, as Treasurer of 13th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

28-6 By M. A. CLANCEY, Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.**

In the case of Wm. Taylor Snyder, Executor of Edward Thornton Taylor, late of Alabama, dec'd., the Executor aforesaid has, with the approval of the Court, appointed Monday, the 30th day of July, A. D. 1883, at 9:30 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise, the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day, and also in the "Norfolk Landmark," a newspaper published in Norfolk, in the State of Virginia.

28-3 Test: H. J. RAMSDELL, Register of Wills.

## Legal Notice.

**THIS IS TO GIVE NOTICE.**

That the subscriber of Baltimore, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Ann Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

THOMAS I. HALL,

119 Welcome Alley, Baltimore.

DANIEL O'C. CALLAGHAN

and

W. J. WATERMAN, Solicitors.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Chelsea, Massachusetts, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hattie V. Bennett, late of Chelsea, Massachusetts, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

PHILO H. BENNETT, Executor.

JAMES G. PATNE, Proctor.

28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily Johnson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

JNO. H. WHITE, Executor.

WORTHINGTON &amp; HEALD, Solicitors.

28-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Davidson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

WM. H. WEST, Administrator.

E. B. HAY, Solicitor.

28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 7th day of July, A. D. 1883.**

CHARLES J. KINSOLVING ET AL. }

No. 8565 Equity.

v. ROBERT M. JOHNSON ET AL.

On motion of the complainants, by Messrs. Haana & Johnston, their solicitors, it is, this seventh day of July, A. D. 1883, ordered, that the defendant Thomas Jefferson Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published for three successive weeks in the Washington Law Reporter.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 28-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Mt. Pleasant, So. Carolina, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of S. Pamela Mackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of July, 1883.

E. W. M. MACKAY, Administrator.

CRITTENDEN &amp; MACKAY, Solicitors.

28-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Egan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

MARY ANNA EGAN, Administratrix.

WM. T. S. CURTIS, Solicitor. 28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, July 13, 1883.**

In the matter of the Will of Robert R. Pywell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Edwin F. Pywell, one of the executors.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. D. WRIGHT, Solicitor. 28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Sands, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

28-3 F. P. B. SANDS, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah H. B. McGruder, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

28-3 CHARLES M. MATTHEWS, Executor.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Telemachus Ford, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

28-3 ALICE A. J. FORD, Executrix.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, July 13, 1883.**

In the matter of the Will of William Fessenden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said dec'd, has this day been made by Mary Dunlevie Fessenden.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m. to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

D. W. FESSENDEN, Solicitor. 28-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of July, 1883.**

HOOD, BONBRIGHT & Co. } No. 24,522. At Law.

v. JOHN LEONARD.

On motion of the plaintiff, by Messrs. Ross & Dean, their attorneys, it is ordered that the defendant, John Leonard, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Assoc. Justice.

A true copy. Test: 27-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the day of July, 1883.**

ANTON REMY } No. 8647. Equity Docket 23.

v. CLARA REMY.

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Clara Remy, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 27-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ROBERT COHEN } No. 7,862. Equity Docket 21.

v. J. H. COHEN ET AL.

Andrew B. Duvall and Henry E. Davis, trustees, having reported to the court the following sales of the real estate in the proceedings mentioned, viz.: said part of lot five, in square four hundred and sixty-one, to Robert Cohen, for \$16 00; the north 22 feet front by depth of lot nine, in square seven hundred and eighty-five, to Ignatius Miller, for \$2,978; the south part of said lot nine, to Albert M. Read, for \$672 37; and said sub-lot twenty four, in square three hundred and fifty-eight, to Ellen C. Toomey, for \$762 61; and that said Cohen and Miller, desire to pay all cash for their respective purchases; it is, by the court, this 19th day of June, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed on the 19th day of July, 1883, unless cause to the contrary thereof be shown. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said last named day.

By the Court. CHAS. P. JAMES, Justice.

Test: 28-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Tullock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

27-3 SEYMOUR W. TULLOCK, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel T. Ellis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

LENORA A. ELLIS, Administratrix.

EDWARDS & BARNARD, Solicitors. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jacob L. Dorwart, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

SUSAN D. DORWART, Executrix.

VORHIES & SINGLETON, Solicitors. 27-3

**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

SPARK ET AL. } No. 8,412. Equity.

**COTLE ET AL. }**  
The trustee, Andrew C. Bradley, having reported that he has sold the real estate in the proceedings described to wit, lot No. 11, in square No. 461, in the city of Washington, D. C., to Frank P. May, for \$18,000; it is, by the court this 23d day of June, 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 23d day of July, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: **37-3 R. J. MILES, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of July, 1883.**

**BENJAMIN K. PLAIN,** trading and doing business under the firm name and style of **B. K. Plain & Co., Plaintiff,**

No. 24,563. At Law.

**MELVILLE S. NICHOLS,** trading and doing business under the firm name and style of **M. S. Nichols & Co., Defendant.**

On motion of the plaintiff, by Mr. E. A. Newman, his attorney, it is ordered that the defendant, Melville S. Nichols, trading and doing business under the firm name and style of M. S. Nichols & Co., cause his appearance to be entered herein on or before the first rule-day occurring thirty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **MAO ARTHUR, Justice.**  
True copy. Test: **37-3 R. J. MILES, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Henry A. Jackson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of December, 1883, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of July, 1883.  
**37-3 ROBERT J. DOUGLASS, Administrator.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 6, 1883.**

In the matter of the Estate of John Coyne, late of Soldiers' Home, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by Patrick J. Durkin, (letters to issue to Benjamin F. Rittenhouse, Major, U. S. A.)

All persons interested are hereby notified to appear in this court on Friday, the 27th day of July next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **H. J. RAMSDALL, Register of Wills.**  
**GORDON & GORDON, Solicitors.** **37-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 6, 1883.**

In the matter of the Will of Daphne Hungerford, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan Pierce, (Howard Pierce, executor.)

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: **H. J. RAMSDALL, Register of Wills.**  
**EDWARD D. WRIGHT, Solicitor.** **37-3**

**Legal Notices.****THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward E. Anderson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1883.

**WILLIAM S. ANDERSON, Executor.**  
**E. D. WRIGHT, Solicitor.** **37-3**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Thompson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of June, 1883.

**WILLIAM MIDDLETON, Executor.**  
**RICHARD P. EVANS, Solicitor.** **37-3**

**THIS IS TO GIVE NOTICE,**

That the subscribers, of Yonkers, N. Y., Racoon, West Virginia and Sacketts Harbor, N. Y., have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Noble Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of June, 1883.

**F. NEMEGYEL,**  
**ALEXANDER STRASZ,**  
**HARRY C. EGBERT,**  
**J. J. DARLINGTON, Solicitor.** **37-3 Executors.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Sitting as an Orphans' Court for the said District, the 2d day of July, A. D. 1883. Hagner, J.**

In re estate of Margaret Adams.

Upon reading the foregoing petition of Benjamin P. Snyder, it is ordered, that Samuel Adams, Elizabeth Mulloy, Samuel Mulloy, Eliza Arnold, William L. Arnold, George Adams, Margaret Adams and Lydia, otherwise called Eliza Ann Adams, show cause on or before the 29th day of September, A. D. 1883, why the last will and testament of the said Margaret Adams, propounded for probate by the said Benjamin P. Snyder, who is named as executor therein, should not be admitted to probate and why Letters Testamentary should not be issued to him thereon. Provided, that a certified copy of this order be published once a week for three successive weeks prior to the said 29th day of September.

By the Court. **A. B. HAGNER, Asso. Justice.**

A true copy. Test: **H. J. RAMSDALL,**  
**37-3 Register of Wills, D. C.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2d day of July, 1883.**

**FRANK L. BEACH }** No. 8464. Eq. Doc., 22.

**COLUMBUS BEACH ET AL. }**

On motion of the complainant, by Mr. R. K. Elliot, Esq., his solicitor, it is ordered that the defendant, Mary Ann Lane, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**

True copy. Test: **37-3 R. J. MILES, Clerk. &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the day of July, 1883.**

**MOLLIE B. REITER }** No. 8,614 Eq. Doc. 22.

**JOHN H. REITER }**  
On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, John H. Reiter, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **37-3 R. J. MILES, Clerk.**



# Washington Law Reporter

WASHINGTON - - - - - July 28, 1883.

GEORGE B. CORKHILL - - - EDITOR

BEFORE it adjourned at its late sessions, the Pennsylvania legislature enacted a law against railway discrimination, of which the following is the second section :

"No railroad company or other common carrier engaged in the transportation of property shall charge, demand, or receive from any person, company, or corporation for the transportation of property or for any other service a greater sum than it shall charge or receive from any other person, company or corporation for a like service, from the same place, upon like conditions and under similar circumstances, and all concessions in rates and drawbacks shall be allowed to all persons, companies or corporations alike for such transportations and service upon like conditions under similar circumstances and during the same period of time. Nor shall any such railroad company or common carrier make any undue or unreasonable discrimination between individuals, or between individuals and transportation companies, or the furnishing of facilities for transportation. Any violation of this provision shall make the offending company or common carrier liable to the party injured for damages treble the amount of injury suffered."

THE plan of numbering the Italian laborers on the West Shore Railroad works like a charm. Finding it impossible to keep track of the men by their jaw-breaking names, the contractors concluded to number them. The number of each Italian is painted in plain figures on the seat of his trousers. Before beginning work in the morning, and at noon and again at night, the men are formed in line, and the foreman passes in the rear of them and takes down each number, in order to ascertain who is present as well as who is absent. The plan is beneficial in two ways—the men are easily recognized, and they are also kept from sitting down too much for fear of rubbing out the figures on the seats of their trousers.

IN MICHIGAN they have a law by which a man can have his will admitted to probate before he dies. All persons interested as heirs or otherwise must then question the testator's sanity or forever thereafter hold their peace. A will admitted to probate during the life of the maker cannot be contested after his death on the ground of his alleged mental incapacity.

SALE OF POISON.—In an action for damages for causing the death of plaintiff's intestate, the evidence was that the intestate had been recommended to take a drug known as "black draught" and that defendant's clerk gave him "black drops," a deadly poison, labeled "black drops" but not labeled "poison;" the clerk testified that he cautioned the intestate that the drug was poison. *Held*, that if the intestate was warned of the deadly nature of the drug the defendant would not be liable in this action because of the omission to mark the drug "poison" as required by the statute; but if no warning was given the omission to label the bottle with the word "poison" was such negligence on the part of the vendor as to render him liable; and that the court erred in directing a verdict for the defendant.—*Wohlfart v. Beckert*, N. Y. Ct. of App., 16 Rep., 85.

DEFECTIVE MACHINERY.—M., while using a machine in his capacity of workman for a manufacturing company, acquired a knowledge of its defects and consequent unsafe condition. He complained of its condition to the foreman under whose orders he was working, and whose duty it was to see that the machinery was kept in good order and repair. The foreman promised him to remedy said defects, and directed him to go to work on the machine. The workman thereupon remained in the service of the company, and continued to use the machine, and in so doing, was injured through the said defects before any steps were taken to remedy the same.

*Held*, that the workman's knowledge of the defects in the machine was not, under the circumstances and as matter of law, conclusive of contributory negligence on his part; but it was a fact in the case to be taken into consideration by the jury, with all the other facts and circumstances, in determining the question whether the workman's own negligence contributed to the accident by which he was injured.—*Union Manufacturing Company v. Morrissey*. Supreme Court of Ohio, 3 Ohio L. J., 730.



# Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOHN CAMPBELL, ADMINISTRATOR OF  
STEPHEN S. SPRINGER,

vs.

NATHANIEL WILSON.

AT LAW. No. 22,986.

{ Decided May 23, 1883.

{ JUSTICES HAGNER, COX and JAMES sitting.

1. As long as a fund is held professedly and admittedly as a trust no lapse of time precludes the beneficiary from claiming it. But the moment there is some breach of duty or adverse claim by the trustee, the statute commences to run.
2. It is doubtful whether the law of trusts, as a bar to the statute, applies to the case of money collected by an attorney for his client, since such moneys are not intended to be held in trust, but to be paid over promptly.
3. When an administrator founds a claim upon a contract made by himself with a party, although it relates to the estate he represents, he may sue upon the contract in his own name. Whether he may also sue on such a contract in his representative character, *quære*.
4. When one is barred by the Statute of Limitations from suing on a contract in his own name, he cannot remove the bar by taking out letters of administration and suing in his representative character.
5. As a usual rule when the Statute of Limitations begins to run, no subsequent transfer of title to the cause of action arrests its operation, thus if it has commenced to run against a party in his lifetime it continues to run against his administrator; if it has commenced to run against an administrator it will continue to run against the administrator *de bonis non*, &c.
6. An action for money had and received cannot be sustained unless it be shown that when the money was received it was *ex æquo et bono* the money of the plaintiff claiming it, and that it was received at the time for his use.
7. By an express contract money was received by W. an attorney of Washington, D. C., for C. an administrator appointed in Florida. The attorney alleged an assignment of the fund and refused to pay it over. More than three years afterwards C. took out letters here and describing himself as administrator under the laws of this District, brought an action against W. for money had and received.

*Held*, that although the money was not payable to C. as administrator appointed here, his description of himself as such might be rejected as surplusage and, but for the Statute of Limitations which had barred the action, a recovery allowed in his individual name.

THE CASE is stated in the opinion.

F. P. CUPPY and JOHN J. WEED for plaintiff.

WORTHINGTON & HEALD for defendant.

Mr. Justice Cox delivered the opinion of the court.

This is an action by John Campbell, calling himself administrator of Springer, appointed as such by the Supreme Court of the District of Columbia, against Nathaniel Wilson. The substance of the declaration is that the defendant, as attorney and counsellor of the plaintiff, on the 26th of October, 1876, collected from the United States the sum of \$9,225, being a claim held by his intestate against the Government, and that the defendant as to \$2,000 of that amount retained the money for his own use and refused to pay it over. The declaration also contains the common counts. The defendant pleads the general issue and the statute of limitations. Further notice of the pleadings will be taken presently. At the trial several exceptions were taken by the plaintiff, only one of which it is necessary to notice. That states that while the defendant was under cross-examination the court arrested the trial of the case and decided that, as matter of law, upon the facts then proved, the plaintiff was not entitled to recover, and instructed the jury to return a verdict for the defendant. It may be well to say a word as to the proof upon the merits. The defendant testified that the plaintiff gave an order on him to pay S. P. Brown \$2,000 out of the proceeds of this claim when collected, and Brown gave a further order in favor of Stanton & Worthington for \$1,000 to be paid out of his \$2,000; that the defendant accepted the orders and paid them when the money was received. The plaintiff's attorney, on the other hand, testified that he simply gave an authority to the defendant Wilson to pay the \$2,000 to Brown, but that Brown having failed to render any service for it, he revoked the order and claimed the payment of the amount from Wilson, which was refused. If the case has to be decided upon its merits, it will depend upon the question which of these two contradictory statements is correct, and the court was wrong in taking that question from the jury. Let us consider then how the case is affected by the defence of limitations. And here, I again refer to the pleadings. To the plea of limitations the plaintiff replies that the sum of money in controversy came into the defendant's possession as the attorney of the plaintiff, and that the defendant holds such sum of money as trustee for the plaintiff, and is not protected in holding it by reason of the statute of limitations. The defendant rejoins to this that, on the 26th of October, 1876, the plaintiff knew he had the money and demanded payment of it, and defendant refused to pay

it then and ever since. On this the plaintiff takes issue; so that the only question of fact in this connection presented on the pleadings is whether the demand was made on Wilson on the 26th or 27th of October and payment was then refused. The plaintiff's witness, Charles Campbell, who was his attorney in fact, testifies that on or about the 26th of October, 1876, he notified the defendant not to pay \$2,000 to Brown and demanded payment of it to himself as agent of the plaintiff, and that the defendant, then and continuously since, refused to accede to the demand. The defendant testifies to the same effect; so that on the only issue of fact made in connection with the statute of limitations, the evidence is all one way, and that on both sides is in favor of the defendant. What then is the law on this subject? It is true that if one holds a fund professedly and admittedly as trustee, no lapse of time precludes the beneficiary from claiming that fund, because no cause of action arises, and therefore he is not in default for not suing until some breach of duty or adverse claim by the trustee; but from the moment when that adverse position is taken by the trustee the Statute commences to run. It may be doubted whether the law of trusts applies to the case of money collected by an attorney for his client, because that money is not intended to be held in trust, but to be paid over promptly; so that from the moment the attorney fails to turn it over a cause of action arises. In this case it is clearly proved that the defendant refused to pay over this money claimed of him, in October, 1876, so that the plaintiff had a cause of action against him immediately, and the statute commenced to run against him from that time. Both the law and undisputed facts, therefore, were with the defendant, and the court committed no error in taking the case from the jury; the facts clearly showing a perfect defence to the action.

A peculiarity of the case is that the pleadings present one issue and the argument an entirely different one; and it may be well to notice the positions taken in the argument.

It was maintained for the plaintiff that, although he was administrator in 1876, when the cause of action accrued, yet he could not sue in this District by virtue of his Florida letters of administration, nor until he took out letters here in February, 1880, and that the statute began to run against him only from the latter date, and the action was brought in ample time after that, viz., in July, 1881.

Now, the law is very well settled, that when an administrator founds a claim upon a con-

tract made by himself with a party, although it relates to the estate he represents, he may sue upon the contract in his own name. The English books hold, that if the money, when received by him, will be assets of the estate, he may also sue in his representative character. Some American cases throw a doubt over this last question, and hold that he must, under such circumstances, sue in his individual name. It is plain then, that this plaintiff, Campbell, who employed Wilson to collect this money, had a right to sue in his own name in this District as soon as the money became due him if there was any such indebtedness, and the statute began to run against them then. Does it make any difference that he afterwards took out letters of administration here? Does that give a new start to the statute of limitation and enable him to sue in the character of local administrator even after he has been barred from suing individually? If so, it would be contrary to all the analogies of the law. As a general rule, when the statute has once begun to run, no subsequent transfer of title to the cause of action arrests its operation. Thus, if it has begun to run against a party in his life-time it continues to run against his administrator; if it has begun to run against an administrator, it will continue to run against an administrator *de bonis non*, &c. But in this case, *a fortiori*, it ought to continue, because there has been no transfer of title even, but the same person has held the cause of action all the time, and the most that he can say is that he has acquired the right to sue in either of two ways, instead of only his individual name, as at first. There has been no new cause of action. That has remained the same all the time. It is the same case as if the act of 1812 was still in force and the plaintiff had the right, as administrator under the Florida laws, to sue here, and should take out local letters here also, with a view of protracting the period within which he could sue.

Another question suggests itself, viz.: whether, if the administrator here were a different person from the plaintiff, he could institute a suit here at all. Could he maintain it under the special count? In this, the declaration avers that Wilson received this money as attorney and counsellor for the plaintiff. The proof is that he received it as attorney and counsellor for another person three years and more before the plaintiff existed as administrator. The proof would clearly not sustain the special count in the declaration. How is it as to the common counts? The only one available would be the count for money had and received. If Mr. Wilson had collected

this money in the lifetime of the deceased, or after his death, under a contract had with him in his lifetime, or had collected it without any authority, the law would call it money had and received for the use of the deceased or his administrator as such, and perhaps any administrator who could give a discharge might sue for it, as money had and received.

But when it appears that the money was received under an express contract with the Florida administrator, and expressly for his use, how can it be money had and received for the use of an administrator appointed more than three years afterward? The action for money had and received cannot be sustained unless it be proved that when the money was received it was *ex cequo et bono* the money of the plaintiff claiming it, and that it was received at the time for his use. It is plain, therefore, that this money could not have been received for the use of this local administrator. The express contract by which it was received of the Florida administrator excludes any implied promise to pay to any other person. The former, if anybody, had a right of action for it, and it cannot be due to two different persons. It does not, therefore, appear that if another person than the plaintiff were administrator here he could have maintained the action. The plaintiff, then, does not benefit himself by describing himself as administrator under the laws of the District. That might be rejected as surplusage, and he might recover as an individual if there were no bar to that recovery; but as an individual he is clearly barred by the defence of limitations.

The judgment is therefore affirmed.

—♦—♦—♦—

HOW THEY DO IN FRANCE.—A timid young man is traversing a lonely wood, when suddenly a gloomy and sullen-looking man accosts him, and, toying with the trigger of his gun, remarks: "Ha! my young friend, I am delighted to meet you. I know you would like to buy a pheasant—a beautiful bird—and you shall have it for twenty francs. You would have to pay that for it at the restaurant, any way. Come, will you have it? Here, Boxer, don't bite the gentleman's leg unless I tell you. Is it a bargain?" His young friend says faintly that a pheasant is precisely what he came out to look for, and pays the money. He hastens to the nearest police station to complain of the highway robbery of which he has been the victim. There he is promptly fined fifty francs for having a pheasant in his possession without a game license, and the bird is confiscated.

## United States Supreme Court.

No. 286.—OCTOBER TERM, 1882.

THE WABASH RAILWAY COMPANY, Plaintiff  
in Error,

vs.

JOHN McDANIELS.

*In Error to the Circuit Court of the United States for the District of Indiana.*

1. A judgment cannot be reviewed in this court upon the ground that the damages found by the jury are excessive.
2. The same degree of care required of a railroad corporation in providing and maintaining machinery for use by its employees must be observed in the appointment and retention of the employees themselves, including telegraphic operators. Ordinary care on the part of such corporation implies, as between it and its employees, not simply the degree of diligence which is customary among those entrusted with the management of railroad property, but such as, having respect to the exigencies of the particular service, ought reasonably to be observed. It is such care as, in view of the consequences that may result from negligence on the part of employees, is fairly commensurate with the perils or dangers likely to be encountered.

### STATEMENT.

This was an action to recover damages for injuries sustained by the plaintiff, the defendant in error here, from a collision between two freight trains belonging to the Wabash Railway Company, a corporation engaged in the business of carrying freight and passengers for hire. The collision took place on the night of August 17, 1877, near Wabash, Indiana.

The jury returned a verdict in favor of the plaintiff for \$15,000. A motion for new trial having been made and overruled, the case has been brought to this court for review.

The action proceeded mainly upon the ground that McHenry, a telegraphic operator in the service of the company, was incompetent for the work in which he was engaged, and that his incapacity to meet the responsibilities of his position could, by reasonable care, have been ascertained, and, in fact, was known to the company at, before, and during the time of his employment.

The essential facts bearing upon the question of the company's negligence in employing McHenry are summarized in one of the paragraphs of the charge to the jury, to which, so far as the facts which the evidence tended to establish are stated, there seems to have been no exception. They are:

"The tenth night after McHenry went on duty as night operator he went to sleep at his post of duty with the result already stated.

He was seventeen years old but a few weeks before this employment. In June, 1876, he went into the service of the defendant, at Wabash, as a messenger boy, and continued in that service some twelve months, during which time he was instructed by Waldo, the day operator, in the art of telegraphy. For this instruction Waldo exacted and received, as compensation, McHenry's wages, \$10 per month. For a month or more before McHenry's employment as night operator he worked in the country, harvesting. The only knowledge that he had of telegraphy was what he acquired under Waldo, and before taking charge as night operator he had never been employed anywhere or in any capacity as operator. He was not competent, as he told you, to take press reports, but was competent, as he thought, and as Waldo and Wade (the latter his predecessor as night operator) thought, to do ordinary business, and to discharge the duty of night operator at Wabash; his habits were good, and he was bright and industrious. Waldo had recommended McHenry to Simpson, the chief train despatcher at Ft. Wayne, as capable and faithful, and without knowing McHenry personally, or even seeing him, and, on Waldo's recommendation, and what Simpson knew of McHenry's skill from having occasionally noticed at Ft. Wayne his fingering the key at Wabash, Simpson directed Waldo to employ McHenry at \$50 a month, or, according to Waldo's testimony, he was directed by Mr. Simpson to put McHenry in charge of the office. McHenry's father told Waldo, before the son entered on the discharge of his duties, that Waldo should have \$10 a month of the son's wages if Waldo would continue to give the son attention, to which Waldo assented. This is the father's testimony. Waldo admits that the father made the proposition to him as stated, but says he replied that the son was competent to take charge of the office and run it without assistance. Boys no older than McHenry had successfully discharged the duties of day and night despatcher on this and other roads, and it seems to have been the custom of the company to educate its telegraph operators while serving as messenger boys. Other railroad companies, it seems from the evidence, have pursued the same course with satisfactory results.

Mr. Justice HARLAN delivered the opinion of the court.

That we are without authority to disturb the judgment below upon the ground that the damages are excessive cannot be doubted. Whether the order of the court below, overruling the motion for new trial upon that

ground, was erroneous or not, our power is restricted to the determination of questions of law arising upon the record. *Railroad Co. v. Fraloff*, 100 U. S., 31.

We also remark, before entering upon the consideration of the matters properly presented for determination, that it is unnecessary to express any opinion upon the question whether the plaintiff and McHenry were fellow-servants, within the meaning of the general rule, that the servant takes the risks of danger ordinarily attending or incident to the business in which he voluntarily engages for compensation, including the carelessness of his fellow-servants. The plaintiff raised no such question at the trial; and took no exception to the instructions, which proceeded upon the ground that plaintiff and McHenry were fellow-servants, and that in accepting employment from the company, they risked the negligence of each other in the discharge of their respective duties. As no such question can arise upon the present writ of error, we pass to the examination, as well of the instructions to which the defendant excepted, as of those asked by it which the court refused to give.

At and before the time of the accident, the plaintiff was a brakeman in the service of the defendant. When injured he was at his post of duty on one of the colliding trains. The collision, it is conceded, was the direct result of negligence on the part of McHenry, one of defendant's telegraphic night-operators who was assigned to duty at a station on the line of its road. He was asleep when one of the trains passed his station, and ignorant, for that reason, that it had passed, he misled the train despatcher at Fort Wayne as to its locality at a particular hour of the night. In consequence of the erroneous information thus conveyed to the train despatcher, the trains were brought into collision, whereby the plaintiff lost his leg and was otherwise seriously and permanently injured.

The court charged the jury, in substance, that the position of a telegraphic night-operator upon the line of a railroad was one of great responsibility, the lives of passengers and employees on trains depending upon his skill and fidelity; that the company 'was bound to exercise proper and great care to get a person in all respects fit for the place; ' that while the defendant did not guarantee to its servants the skill and faithfulness of their fellow-servants, its duty was 'to use all proper diligence in the selection and employment of a night-operator,' and to discharge him after being employed, if it learned or had reason to believe that he was incompetent or negli-

gent; that the plaintiff had a right to suppose that the company 'would use proper diligence in the selection of its telegraphic operators and all other employees whose incapacity or negligence might expose him to dangers, in addition to those which were naturally incident to his employment;' that 'what will amount to proper diligence on the part of a master in the selection of a servant for a particular duty will in part depend on the character and responsibility of that duty; that 'the same degree of diligence which is required in the employment of a locomotive engineer would not be required in the employment of a fireman;' that 'sound sense and public policy require that railroad companies should not be exempt from liability to their employees for injuries resulting from the incompetency or negligence of other co-employees, when, by the exercise of proper diligence such injuries might be avoided;' that the presumption is that the defendant 'exercised proper diligence in the employment of McHenry, and the burden of proof of showing the contrary is upon the plaintiff;' but, 'if from any cause McHenry was not a fit person to be entrusted with the responsible duties of night-operator, and the defendant knew that fact or by reasonable diligence might have known it, it is liable, for it is admitted that the plaintiff's injuries were the direct result of McHenry's negligence, and there is no proof that the plaintiff contributed to the accident by his own negligence.'

To each of these instructions the defendant excepted at the time and in proper form.

Among those asked by the company, and for the refusal to give which error is assigned, is one which presents the distinction between the propositions of law presented to the jury for its guidance, and those which the railroad company requested to be given.

It is as follows:

"Although McHenry may have been and was guilty of negligence, and that negligence may have caused and did cause the collision which resulted in the injury to the plaintiff complained of, still the plaintiff cannot recover in this action, unless it appears from the evidence that the defendant was guilty of negligence either in the appointment of said McHenry or in retaining him in his position; and to establish such negligence on the part of the defendant, not only the incompetency of said McHenry must be shown, but it must be shown that defendant failed to exercise ordinary care or diligence to ascertain his qualifications and competency prior to his appointment, or failed to remove him after his incompetency had come to the notice of

the defendant, or to some agent or officer of defendant having power to remove said McHenry."

The court modified this instruction by striking out the word 'ordinary' in the only place where it occurred, and inserting in lieu thereof the word 'proper.' Thus modified the instruction was granted, the defendant excepting, at the time, to the refusal to give the instruction in the form presented.

The main contention of the defendant is that the jury were instructed that the duty of the company was to observe 'proper and great care, when they should have been instructed that only ordinary care was required in the employment and retention of its employees. The former degree of care, it is contended, is a matter of opinion upon a question of law, while the latter is a question of fact, and the contention of counsel is, that the question of ordinary care is to be determined by the usages or custom which obtain in railroad management, and, therefore, the proper inquiry is not what ought to be, but what is the general practice in that business; that what the servant is presumed to know, and to have accepted as the basis of his employment, is the practice or custom as it is when, in hiring his services, he risks the dangers incident to his employment; that the law presumes that master and servant alike contract with reference to that which is equally within their observation and inquiry; consequently, the company was required, in the selection of plaintiff's fellow-servants, whose negligence might endanger his personal safety, not to observe 'proper and great' (which counsel insists mean peculiar) care, but only that degree of diligence which the general practice and usage of railroad management sanctioned as sufficient.

In *Hough v. Railway Co.*, 100 U. S., 213, it was decided that among the established exceptions to the general rule as to the non-liability of the common employer to one employee for the negligence of a co-employee in the same service, is one which arises from the obligation of the master, whether a natural person or a corporate body, not to expose the servant when conducting the master's business, to perils or hazards against which he may be guarded by proper diligence upon the part of the master; that the master is bound to observe all the care which prudence and the exigencies of the situation require, in providing the servant with machinery or other instrumentalities adequately safe for use by the latter; and that it is implied in the contract between the master and the servant, that in selecting physical means and agencies

for the conduct of the business, the master shall not be wanting in proper care. It was further said that the obligation of a railroad company, in providing and maintaining, in suitable condition, machinery and apparatus to be used by its employees, is the more important, and the degree of diligence in its performance the greater, in proportion to the dangers which may be encountered; and that "its duty in that respect to its employees is discharged when, but only when, its agents, whose business it is to supply such instrumentalities, exercise due care as well in their purchase originally as in keeping and maintaining them in such condition as to be reasonably and adequately safe for use by employees."

These observations as to the degree of care to be exercised by a railroad corporation in providing and maintaining machinery for use by employees, apply with equal force to the appointment and retention of the employees themselves. The discussion in the adjudged cases discloses no serious conflict in the courts as to the general rule, but only as to the words to be used in defining the precise nature and degree of care to be observed by the employer. The decisions, with few exceptions, not important to be mentioned, are to the effect that the corporation must exercise ordinary care. But according to the best-considered adjudications, and upon the clearest grounds of necessity and good faith, ordinary care, in the selection and retention of servants and agents, implies that degree of diligence and precaution which the exigencies of the particular service reasonably require. It is such care as, in view of the consequences that may result from negligence on the part of employees, is fairly commensurate with the perils or dangers likely to be encountered. In substance, though not in words, the jury were so instructed in the present case. That the court did not use the word "ordinary" in its charge is of no consequence, since the jury were rightly instructed as to the degree of diligence which the company was bound to exercise in the employment of telegraphic night-operators. The court correctly said that that was a position of great responsibility, and, in view of the consequences which might result to employees from the carelessness of telegraphic operators, upon whose reports depended the movements of trains, the defendant was under a duty to exercise "proper and great care" to select competent persons for that branch of its service. But that there might be no misapprehension as to what was in law such care, as applicable to this case, the court proceeded,

in the same connection, to say that the law presumed the exercise by the company of proper diligence, and unless it was affirmatively shown that the incapacity of McHenry when employed, or after his employment and before the collision, was known to it, or by reasonable diligence could have been ascertained, the plaintiff was not entitled to recover. Ordinary care, then—and the jury were, in effect, so informed—implies the exercise of reasonable diligence, and reasonable diligence implies, as between the employer and employee, such watchfulness, caution and foresight as, under all the circumstances of the particular service, a corporation controlled by careful, prudent officers, ought to exercise.

These observations meet, in part, the suggestion made by counsel, that ordinary care in the employment and retention of railroad employees means only that degree of diligence which is customary, or is sanctioned by the general practice and usage which obtains among those entrusted with the management and control of railroad property and railroad employees. To this view we cannot give our assent. There are general expressions in adjudged cases, which apparently sustain the position taken by counsel. But the reasoning upon which those cases are based is not satisfactory, nor, as we think, consistent with that good faith which, at all times, should characterize the intercourse between officers of railroad corporations and their employees. It should not be presumed that the employee sought or accepted service upon the implied understanding that they would exercise less care than that which prudent and humane managers of railroads ought to observe. To charge a brakeman, when entering the service of a railroad company, with knowledge of the degree of care generally or usually observed by agents of railroad corporations in the selection and retention of telegraphic operators along the line traversed by trains of cars—a branch of the company's service of which he can have little knowledge, and with the employees specially engaged therein he can ordinarily have little intercourse—is unwarranted by common experience. And to say, as matter of law, that a railroad company discharged its obligation to an employee—in respect of the fitness of co-employees whose negligence has caused him to be injured—by exercising, not that degree of care which ought to have been observed, but only such as like corporations are accustomed to observe, would go far towards relieving them of all responsibility whatever for negligence in the selection and retention of incompetent

servants. If the general practice of such corporations in the appointment of servants is evidence which a jury may consider in determining whether, in the particular case, the requisite degree of care was observed, such practice cannot be taken as conclusive upon the inquiry as to the care which ought to have been exercised. A degree of care ordinarily exercised in such matters, may not be due, or reasonable or proper care, and therefore not ordinary care, within the meaning of the law.

It is further objected to the charge that the court below confounded the degree of care owed as a duty to passengers with the degree of care to be observed in the case of employees. This objection necessarily rests upon the assumption that the instruction as to the exercise of "proper and great care" in the selection of telegraphic night-operators accurately stated the degree of diligence to be observed as between the railroad company and passengers. But clearly the statement in the charge that the lives of both passengers and employees depended upon the skill and fidelity of telegraphic operators, employed by the corporation in connection with the movement of its trains, was not for the purpose of indicating, with legal precision, the degree of care upon which passengers could rely in all matters affecting their safety. They, at least, have the right to expect the highest or utmost, not simply a great degree of diligence on the part of passenger carriers and all persons employed by them. The reference, therefore, to passengers, in the instructions alluded to, was not calculated to make the impression that employees could count upon the same degree of care that is required by law towards passengers. Whether in the selection and retention of telegraphic operators, upon whose capacity and watchfulness largely depends the personal safety of employees on trains, a corporation should or not exercise the same degree of care which must be observed in the case of passengers, it is not necessary now to consider or determine. It is sufficient to say that the corporation was bound, in the appointment and retention of such operators, to observe, as between it and its employees, at least the degree of care indicated in the charge to the jury.

Among the instructions asked in behalf of the company, the refusal to give which is the basis of one of the assignments of error, is the following:

r the carelessness of said McHenry the carelessness of the defendant, or to render the defendant liable for the same,

it is incumbent on the plaintiff to prove that said McHenry was appointed to or retained in his position as telegraph operator with knowledge on the part of the company, or some officer or agent of the company having the power of appointment or removal, that he was incompetent, or that such knowledge might have been obtained by the use of reasonable diligence on the part of the defendant, or of such officer or agent of the defendant."

It is now complained that the refusal to give this instruction was practically a declaration to the jury that the company was responsible for knowledge which it had through any of its agents or through its agents generally; whereas it was liable only for the negligence or omission of those of its agents who were charged with the duty of selecting and controlling its employees and its general business. It is sufficient to say that this point—assuming the instruction in question to be correct—was covered by the last clause of the instruction to which our attention was first directed, and in terms quite as favorable to defendant as it was entitled to under the law. The court, in that instruction, expressly said that to establish the alleged negligence, not only the incompetency must be shown, "but it must be shown that the defendant failed to exercise proper care or diligence to ascertain his qualifications and competency prior to his appointment, or failed to remove him after his incompetency had come to the notice of defendant or to some agent or officer of defendant having power to remove said McHenry."

It is not necessary to further extend the discussion of the questions pressed upon our consideration. We are of opinion that the case, in all of its aspects, was fairly placed before the jury in the instructions given by the court. No substantial error of law was committed to the prejudice of the company, and the judgment must be affirmed.

A NOVELTY in the form of defense to a suit for damage was admitted by the Judge of the United States Circuit Court at St. Paul the other day. Julia C. Crockett was injured by the cars of the St. Paul and Milwaukee railway, being caught between the platforms. She brought suit to recover damages, and the company set up the plea of contributory negligence, on the ground that she wore a pull-back dress at the time, and that this "prevented her from availing herself of natural means of escape." In other words, her dress interfered with her movements. The Judge said the evidence was proper and admitted it,

JOSLIN V. MILLER.

*Supreme Court of Nebraska. March, 1883.*

1. *Negotiable Instruments; Validity of Note made as to Foreign State.*—The validity of a note made in Nebraska and payable in New York is to be determined by the laws of Nebraska.
2. *Usury; Agent; Ratification.*—One who affirms a usurious loan made by an agent adopts all the instrumentalities employed by the agent in the transaction.

Appeal from Colfax county.

Action to foreclose a mortgage securing a note. The note was made in Nebraska and payable in New York. The defendants pleaded payment, and usury under the laws of New York. The plaintiff appealed.

MAXWELL, J., in delivering the opinion of the court, said: In the argument of this case the attorneys for the appellee insisted very strenuously that the contract was to be governed by the laws of New York, and that as by the laws of that State, which are set out in the answer, an usurious contract is void, therefore the plaintiff is not entitled to recover. The same question, on substantially the same facts, was before this court in the case of *Olmstead v. N. E. Mtge. Co.* 11 Neb., 493, and it held that the validity of the contract was to be determined by the laws of this State and not of New York. And we adhere to that decision.

The statute fixes the maximum rate of interest and declares the penalty of taking a greater rate—the loss of all interest. It applies to all persons loaning money. The language is: "If, in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall only recover the principal without interest," etc. The plaintiff, therefore, who affirms a contract made for him by his agent must adopt all the instrumentalities employed by his agent to bring it to a consummation. *N. E. Mtge. Sec. Co. v. Hendrickson*, 12 N. W. Rep. 916; *Ellwell v. Chamberlain*, 31 N. Y., 619; *Fuller v. Wilson*, 3 Ad. & E., N. S., 58; *Nat. Exch. Co. v. Drew*, 32 Eng. Law & Eq., 1. The reason is, the law will not permit the principal to adopt that which he thinks is beneficial and reject the remainder. The contract must be adopted as a whole. With what reason, therefore, can a party say that a contract which he affirms, made for him by an agent whom he authorized to loan his money, is not usurious because he has not received directly an amount in excess of the legal interest? The person authorized by him to make the loan, however, did receive such excess, and that was a portion of the contract by which the loan was effected. The

statute is clear and unambiguous and applies to all persons loaning money. To permit an agent to charge a rate of interest in excess of what his principal could do would practically abolish the law regulating the rate of interest and offer a premium for devices and subterfuges for the evasion of the statute. Decree affirmed.

#### NOTES OF RECENT DECISIONS.

*Patents: evidence; profits.*—In a suit for the infringement of a patent for preserving and verifying bonds by a book for their registration, on a reference to ascertain the damages, the only evidence as to the profits was that of a witness who had used the complainant's system and who testified that in his opinion there would be an advantage or benefit in money for the use of the complainant's system of half a dollar on each bond registered, supposing the bonds to run twenty years. The master reported for the complainant at two and a half cents per year. *Held*, That there was no evidence before the master by which to ascertain what profits the defendant obtained by using the complainant's system. [*Munson v. The Mayor of New York*. U. S. C. C., S. D. of New York.]

*Patents: publication of use; Experiment.*—Public use of an invention by the patentee before the application for a patent will not work a forfeiture of his title unless it clearly appears that the use was solely for profit and not with a view of further improvements, or of ascertaining its defects, or for any other purpose of experiment in reducing the invention to practice. [*Emery v. Cavanagh*. U. S. C. C., S. D. of New York.]

*Patents: office of disclaimer.*—A disclaimer can add nothing to a patent. It may take away from what was described as the invention, and claimed as such so as to be covered by the patent; but it has no office to make the patent cover anything, however clearly shown in the patent, not so described and claimed as a part of the invention. [*White v. Gleason Manufacturing Co.* U. S. C. C., S. D. of N. Y.]

*Infant; contract; necessity; proof.*—In an action against an infant upon a contract of sale, the plaintiff must show that the property purchased was a necessity, and the burden of proof, in this regard, does not shift to the infant. Unless the plaintiff shows a clear case of necessity he must fail. [*Wood v. Losey*. S. C. of Michigan.]



## Land Department.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, D., C. July 17, 1883.  
*The Comm'r of the General Land Office :*

Where a party made one homestead entry under general homestead laws and thereafter made second homestead entry of other land under Act of June 8, 1872, (R. S., sec. 2304) believing that he was entitled to both :

*Held*, Notwithstanding inequality in second entry the entryman may purchase the land covered thereby under act of June 15, 1880, if same was subject to entry and there is no adverse claim.

SIR: I have considered the case of Chas. McNeff v. Chas. Newman, involving Lot 2, the S. E. 2-4, of the N. W. 2-4, Lot 3 of the S. W. 1-4, and the N. 1-2 of the S. E. 1-4, Sec. 25, T. 11, R. 3 W., Marysville, California, on appeal by Hiram L. Parker, from your decision of November 29, 1881, allowing Newman to purchase the tracts under the Act of June 15, 1880.

Newman made homestead entry of the tracts August 13, 1878, and McNeff commenced contest against them for abandonment thereof in August, 1880. Pending consideration of that case, Newman applied in April, 1881, to purchase the tracts under the Act of June 15, 1880, and pending that application Parker applied to enter them under the homestead laws, alleging that Newman's entry was void *ab initio*, because of a former entry in 1874, whereby he exhausted his homestead right. Parker appealed from the local officers' refusal to allow a hearing respecting Newman's good faith as to his second entry.

It does not appear that McNeff had any interest in, or claim to the tracts, except as a contestant of Newman's entry, and under the Act of May 14, 1880, he had no preference or other right until he procured cancellation of that entry, which he had not done. Notwithstanding this, he sold and conveyed to Parker whatever right he had, and Parker thenceforth continued to prosecute in the name of McNeff the proceedings against Newman.

You find from the testimony that Newman acted in good faith and without intent to defraud the government in his second entry, which he made under the belief that he had the right to one entry under the general homestead laws, and another under the Act of June 8, 1872, (Sec. 2304, R. S.) by reason of his services in the Navy of the United States during the late Rebellion,

It is not necessary to consider herein whether or not Newman's second entry was an appropriation of the tracts so that while it remained of record, they were not subject to

further entry, nor whether Newman had exhausted his homestead right by his entry in 1874, nor whether Parker could continue the proceedings against Newman in the name of McNeff, after the latter had abandoned them, and had the right of appeal from any decision in the matter, because the first and real question is whether or not Newman had the right to purchase the tracts under the Act of June 15, 1880, and this seems settled by the construction of that act as held in the case of Maughn (Copp, June, 1882) and other cases, that, notwithstanding irregularity in the entry, the entryman may purchase if the land was subject to entry and there is no adverse claimant, both of which conditions are favorable to Newman.

Your decision is affirmed, and the papers transmitted with your letter of September 5, 1882, are herewith returned.

Very respectfully,

H. M. TELLER, *Secretary.*

## The Courts.

### EQUITY COURT.—Justice James.

JULY 16, 1883.

Mason v. Mason. Referred to auditor.  
Shoemaker v. Shoemaker. Decree of July 12, 1883, amended.

Adams v. Adams. Receiver appointed.  
Norment v. Ward. Guardian ad litem appointed.  
Temple v. Worthington. Order of final ratification.

Hanna v. Pendleton. Same.  
Foulke v. Foulke. Referred to take testimony.  
Murdock v. Fletcher. Referred to auditor.  
Hockmeyer v. Newmeyer. Publication ordered.  
Killian v. Killian. Guardian ad litem appointed.

Kaiser v. Cissell. Trustee appointed and contract confirmed.

Lewis v. Lewis. Referred to examiner.  
Smallwood v. Lynch. Sale finally ratified.  
Smith v. Smith. Commission to take testimony.

JULY 17, 1883.

Bell v. Mankin. Settled and dismissed.  
Chase v. Chase. Trustee to pay over money.  
Sacchie v. Dye. Restraining order.  
Bell v. Wilkinson. Sale ratified.  
Dodge v. Offley. Trustee directed to pay administrator.

JULY 18, 1883.

Rhodes v. Kelly. Payment of legacy decreed.

JULY 19, 1883.

Cypert v. Green. Injunction denied.  
Hudson v. Hudson. Publication ordered.  
Barbour v. Leddy. Sale finally ratified.  
Leddy v. Leddy. Same.  
Tayloe v. Tayloe. Referred to auditor.  
Marrimon v. Marrimon. Order staying proceedings.

Bush v. Stanton. Trustee authorized to pay over money.

Marr v. Barry. Guardian ad litem appointed.  
Schroth v. Miller. Sales ratified.

JULY 21, 1883.

Morrison v. Boyland. Publication ordered.

JULY 23, 1883.

Mut. Benefit Life Ins. Co. v. Post. Referred to auditor.

Jackson v. Blackwood. Sale confirmed and referred to auditor.

Hoffman v. Callan. Substitution of trustee.

Offutt v. Bohrer. Publication ordered.

Costine v. Costine. Leave of defendant to file answer.

Dalton v. Lewis. Exception to report sustained.

Rowles v. Rowles. Divorce decreed.

Crown v. Boucher. Sale finally ratified.

Seltz v. Seltz. Divorce decreed.

JULY 24, 1883.

Burry v. Burry. Divorce decreed.

Cohen v. Cohen. Order of ratification and referred to auditor.

Bell v. Wilkinson. Auditor's report ratified.

JULY 25, 1883.

Adams v. Cooper. Guardian ad litem appointed.

Lord v. O'Donoghue. Rule denied without prejudice.

JULY 26, 1883.

Iardello v. Bulger. Publication ordered.

Wininger v. Dougherty. Final ratification of sale.

Stenzel v. Otterbach. Restraining order granted.

Central Nat. Bank v. Hume. Remanded to examiner.

JULY 27, 1883.

Nolte v. Nolte. Order to pay alimony.

Wash. Ben. En. Asso. v. Wood. Party allowed to intervene.

Barnard v. Barnard. Commission ordered to issue.

Swann v. Swann. Consolidated with Newcombe v. Swann. Decree for sale.

**CIRCUIT COURT.—Justice Mac Arthur.**

JULY 5, 1883.

Popper v. Damman. Judgment by default.

Beard, Son &amp; Co. v. Mix. Same.

Brewster &amp; Co. v. Bliss. Same.

Jesselsohn &amp; Co. v. Silverberg. Same.

Lamb v. Fitzgerald. Same.

Ryneal, jr., v. Schutter. Same.

Joyce and Miller v. Nailor. Same.

Boteler v. Bliss et al. Same.

Thurber &amp; Co. v. Cornell. Same.

Miller and Yager v. Harrington. Same.

Miller v. Miller. Fiat on Sci. Fa.

Mayse v. Bright, Humphrey &amp; Co. Judgment against garnishee denied.

Hurley v. Joseph. Bill of exceptions signed.

Plain &amp; Co. v. Nichols. Publication ordered.

O'Day v. Vansant. Bill of exceptions signed.

U. S., use of Alexander, v. Ritchie. Demurrer to declaration sustained.

Moses v. Howgate. Motion by U. S. to set aside judgment overruled.

May Term adjourned *sine die*.**CIRCUIT COURT.—New Suits at Law.**

JULY 18, 1883.

24623. Dwight &amp; Hoyt v. Diller B. Groff et al. Bond, \$1,500. Pliffs atty, John F. Ennis.

JULY 19, 1883.

24624. Robert O. Holtzman v. Matilda Wagner. Account, \$255.50. Pliffs atty, G. E. Hamilton.

24625. Harrison &amp; Lansdale v. Lee Phelps. Acc't, \$82.14. Pliffs atty, John E. McNally.

JULY 21, 1883.

24626. Mary E. Chandler v. Clayton McMichael. Damages, \$5,000. Pliffs atty, Leon Tobner.

24627. The National Metropolitan Bank of Washington, D. C. v. Zephaniah Jones. Note, \$1,500. Pliffs atty, N. Wilson.

24628. Richard H. W. Reed v. Elias E. White. Damages, \$10,000. Pliffs atty, Payne and Payne.

JULY 23, 1883.

24629. William Anderson v. Christiana Strass. Certificate. Defs atty, John A. Clarke.

JULY 24, 1883.

24630. Thomas Lucas v. The Evening Critic Publishing Company of Washington, D. C., Libel, \$20,000. Pliffs attys Cooper &amp; Willoughby.

24631. John T. Varnell v. John M. Keating. Due bill, \$2,157.60. Pliffs atty, F. W. Jones.

24632. Maximilian A. Dauphin v. Walter Q. Gresham. Damages, \$100,000. Pliffs attys, Moulton and Chandler.

JULY 26, 1883.

24633. Henry A. Willard v. Ellen O. Grant et al. Acc't., rent, \$200. Pliffs atty, W. C. Murdock.

24634. William P. Copeland v. Joseph R. West. Bill of exchange, \$1,000. Pliffs atty, R. Christy.

24635. Otis Bigelow et al. v. The United American and European Stone, Marble, Tile and Paint Company. Acc't., \$400. Pliffs attys, Worthington and Heald.

24636. Arnold Kohn et al. v. Louis Kaufman. Account, \$532. Pliffs atty, C. D. Fowler.

24637. A. Will &amp; Son v. Warner J. Kenderdine et al. Note and account, \$4,402.65. Pliffs atty, H. W. Garnett.

JULY 27, 1883.

24638. E. B. Warren &amp; Co. v. John H. Bird. Note, \$160. Pliffs attys, Worthington &amp; Heald.

**IN EQUITY.—New Suits.**

JULY 18, 1883.

8648. Samuel D. Linn v. Richard P. Jackson et al. For release. Com. sol., William E. Linn.

8649. Laura E. Pyncheon v. William McK. Pyncheon. For divorce. Com. sols., Cook &amp; Cole.

JULY 19, 1883.

8650. Rufus A. Morrison v. Catharine Boyland et al. To quiet title. Com. sol., J. H. Smith.

8651. James H. McKenney v. Sallie Carroll et al. To appoint new trustee. Com. sol., William A. McKenney.

8652. Minerva S. Wynne v. Thomas E. Waggaman. For release. Com. sol., R. H. Goldsborough.

JULY 23, 1883.

8653. Charles T. Chapin et al. v. Benjamin F. Beveridge. Partition. Com. sol., W. Blair.

JULY 24, 1883.

8654. John G. Elliot v. James N. Callan et al. Judgment creditors' bill. Com. sol., Jesup Miller.

JULY 25, 1883.

8655. Lewis D. Means et al. v. Robert Smith et al. Judgment creditors' bill. Com. sol., R. P. Jackson.

8656. Mary J. Keyes v. Richard T. Keyes. For divorce. Com. sols., Gordon &amp; Gordon.

JULY 26, 1883.

8657. Freedmans' Saving and Trust Co. v. B. H. Warner et al. Injunction and account. Com. sol., F. T. Browning.

8658. Augusta McBlair et al. v. Thos. E. Waggaman et al. To appoint trustee. Com. sol., H. W. Garnett.

8659. John Stenzel et al. v. Sarah Otterbach. Injunction. Com. sol., C. A. Elliot. Defs sol., P. B. Stilson.

**PROBATE COURT.—Justice James.**

JUNE 29, 1883.

Louisa K. Camp; petition for guardianship of orphans of Elisha C. Camp.

Estate of Jacob L. Dorwart; will admitted to probate and letters granted, and executrix qualified.

JUNE 30, 1883.

Estate of Hayward M. Hutchinson; executrix's bond completed.

Estate of Noble Young; inventory returned by executor.

Estate of Josiah Essex; same.

Eldra J. Essex, guardian; annual return made by guardian.

JULY 2, 1883.

Estate of Henry A. Jackson; notice by administrator to be published.

Estate of Jacob L. Dorwart; bond signed by second surety.

Estate of Lawrence R. Byrne; bond signed by administrator.

Charles T. Chapline, guardian; bonded.

Estate Chas. Ewing; renunciation of widow and administrators appointed and bonded.

Estate of Margaret Adams; petition for probate; order of publication.

JULY 3, 1883.

Estate of Geo. F. C. Drescher; will admitted to probate; letters granted executor bonded.

Estate of Frances A. Ashford; inventory returned by executor.

JULY 5, 1883.

Estate of Belinda Kondrup; inventory of personality. Will and codicil of Benjamin F. Sands; filed with petition.

JULY 6, 1883.

Estate of Benjamin F. Sands; will proved by two witnesses.

Will of Charles Case; filed and proved and codicil filed; letters granted.

Estate of Geo. A. Fitch; affidavit filed in lieu of account. Estate of Hattie V. Bennett; petition of widower for letters; bonded and qualified.

Estate of Geo. L. Hammeken; order of June 28, 1883, modified.

Estate of Telemachus Ford; executrix bonded and qualified.

Estate of Margaret A. Randall; caveat dismissed. Robert Brown, guardian; appointed and bonded.

Estate of Emily Johnson; will admitted to probate and letters granted.

Ellen Lawlor, guardian; appointed and bonded. Codicil of John G. Killian; filed and admitted to probate.

Estate of Robert Davidson; renunciation of widow and administrator appointed and bonded.

Estate of Fanny W. Callahan; administrator allowed to sell stock, report of sale filed.

Estate of Charles H. Combs; father appointed administrator.

Will of Daphne Hungerford; filed, proved by two witnesses and publication ordered.

Accounts passed:

Estate of James A. Barr; final account of executor. Estate of John B. Castell; final account of administrator.

Estate of Joseph Gerhardt; first account of executrix. Estate of William Johnson; first account of executor.

Estate of Mary M. McIntire; first account of administrator.

Estate of Geo. W. Riggs; second account of executor. Estate of Sarah A. Sanger; first account of executor.

Estate of James G. Weaver; first account of executor. Annie Doherty, guardian; final account.

Mary E. Fowie, guardian; first account. In re Chas. P. Thomson, executor, &c.; decision reserved.

In re John Coyne; order of publication. JULY 7, 1883.

Estate of Emily Johnson; executor completed bond and qualified.

Estate of Sarah H. B. Magruder; will admitted to probate and letters granted.

Estate of Margaret A. Randall; will proved by two witnesses.

Estate of Robert Davidson; administrator bonded and qualified.

Estate of Benjamin F. Sands; executor bonded and qualified.

JULY 9, 1883.

Estate of Sarah H. B. Magruder; proof of publication, executor qualified.

Estate of Caroline C. Denham; administrator bonded and qualified.

Estate of Charles Case; inventory returned by executrix. In re Elizabeth A. McGrew; proof of publication; guardian's sale ratified.

Codicil of Charles Case; sent with commission to take testimony of witnesses.

Will of Joseph M. Young; filed for probate.

JULY 10, 1883.

Geo. A. Bassett, guardian; bonded. Ann Tierney, guardian; bonded.

Estate of Royal Parkinson; inventory returned by administrator.

Estate of Augusta B. Garrett; affidavit of executor and legatee filed, with final account.

Estate of Edward T. Tayloe; notice to executor with order of publication appointing time for settlement.

JULY 11, 1883.

Will of Joseph M. Young; proved and admitted to probate.

Will of Edward Hammersley; filed for probate.

Estate of Sarah H. B. Magruder; inventory returned by executor.

Estate of Hayward M. Hutchinson; inventory returned by executrix.

Agnes Kayser, guardian; appointed and bonded.

Estate of Bridget McNamara; proof of publication, will and codicil proved and admitted to probate.

Estate of S. Pareira Mackey; proof of publication, administrator appointed and qualified.

Geo. A. Bassett, guardian; bond completed.

JULY 13, 1883.

Estate of Michael H. Homiller; inventory returned by administratrix.

Estate of Thomas L. Tullock; appraisal appointed.

Estate of Margaret A. Randall; caveat dismissed, codicil declared void; will admitted to probate and letters granted.

Estate of Charles Ewing; administrator bonded and qualified.

Estate Francis Dalton; renunciation of executrix; will admitted to probate, administrator c. t. a. appointed.

Estate of William Barnes; certain articles declared exempt from claim of creditors; distribution ordered and sale of balance.

Estate of Michael Reuter; will proved; proof of publication and will admitted to probate, letters granted.

Estate of John W. Starr; will admitted to probate and letters granted to widow.

Susan B. Porter, guardian; appointed.

In re Thomas Berry, guardian; petition for restatement of account.

Estate of Clark Mills; approval of sale of certain personal property.

Estate of Gottlieb Rumpf; sale of note directed.

Estate of James McCarthy; sworn statement of administratrix c. t. a., lieu of account filed.

Estate of John J. F. Joachim; exceptions of parties to executor's restated account filed.

Will of Catharine Miller; filed for probate and renunciation of executors.

Will of Susan S. M. St. Clair; filed for probate.

James O. Vermillion, guardian; bonded.

Estate of James Egan; widow appointed administratrix.

Estate of Bennett Lee; petition for letters filed.

Estate of Edward Hammersley; renunciation of executor, will proved by one witness.

Will of Wm. Fessenden, filed; order of publication.

Will of Robert R. Pywell; filed and fully proved; order of publication.

Estate of James Murt; petition of creditor for administration; citation directed to issue.

In re Chas. H. Wiltberger, guardian; appointed and bonded.

Will of Jane E. W. Kelly; filed and proved by two witnesses; will admitted to probate and letters granted.

Estate of Geo. N. Hopkins; account of sale returned by executrix and distribution of balance ordered, first account passed.

Samuel C. Raub, guardian; final account.

Accounts passed:

Estate of Augusta B. Garrett; final account of executor.

Estate of John B. Harris; first account of administrator c. t. a.

Estate of Geo. A. Otis; first account of executor.

Estate of James Reed; first account of executrix.

Estate of Henry C. Young; first account of administratrix.

P. Edwin Dye et al.; guardian's sixth account.

Amanda A. Witherow, guardian; sixth general and individual accounts.

Estate of Elizabeth Miller; bond of administrator c. t. a. signed by surety in blank.

Estate of Cornelius Cohan; will admitted to probate and proof of publication.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.

JOHN HUNTER JARDELLA

v.

JOHN T. BULGER ET AL.

No. 8592. Eq. Doc.

On motion of the plaintiffs, by Messrs. Roas & Dean, his solicitors, it is ordered that the defendants, John T. Bulger and Rev. W. T. Durham, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy.

Test: 30-3 R. J. Maigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.

AUGUSTA McBLAIR ET AL.

Complainants

v.

THOS. E. WAGGAMAN ET AL.

Defendants.

No. 8668. Eq. Doc. 23.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Sarah Ann Newton, Catharine Ann Munson, Miles O. Munson, Margaret M. Summers, Simon L. Summers, Amelia A. Harris, Marcellus W. Harris, Ella L. Stapp, Butler B. Stapp and William D. W. Newton, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy.

Test: 30-3 R. J. Maigs, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Isabella Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of July, 1883.

FRANCIS R. R. BROMWELL,  
ISABELLA HAGNER.

30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martha A. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of July, 1883.

30-3

JOB BARNARD, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Bennett Lee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

30-3

REBECAH W. LEE, Administratrix.

A. C. RICHARDS, Solicitor.

30-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 23d day of July, 1883.**

ELIZA A. ORFUTT

No. 8634. Eq. Doc., 23

GEORGE A. BOHRER AND OTHERS

On motion of the plaintiff, by Mr. R. P. Jackson, her solicitor, it is ordered that the defendants, John M. P. Clitz, Mary Clitz, Julius S. Bohrer, Lucinda Bohrer, B. Rush Bohrer and William H. Bohrer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

True copy. Test: 30-3 R. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 21st day of July, 1883.**

RUFUS A. MORRISON

CATHARINE BOYLAND AND THE  
UNKNOWN HEIRS AT LAW OF  
MICHAEL DOYLE.

No. 8650. Eq. Doc. 23.

On motion of the plaintiff, by Mr. James H. Smith, his solicitor, it is ordered that the defendants, the unknown heirs at law of Michael Doyle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 30-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. July 27, 1883.**

In the matter of the Will and Codicil of Ida K. Davie, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Robert G. Dyrenforth.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test: 30-3 H. J. RAMSDELL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henrietta Dorsey Handy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

E. D. F. BRADY, Solicitor.

LOUISA WILSON.

30-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. July 26, 1883.**

In the case of William A. Gordon, Administrator c. t. a., of Ella S. Dodge, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administrator c. t. a. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 30-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 21st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of July, 1883.

SARAH M. STARR, Executrix.

HAGNER & MADDOX, Solicitors.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence R. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.

29-3

CHARLES E. ORECOY, Administrator.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

CHARLES WALTER, Executor.

CHAS. A. WALTER, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Mt. Pleasant, So. Carolina, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of S. Pamela Mackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of July, 1883.

E. W. M. MACKEY, Administrator.

CRITTENDEN & MACKEY, Solicitors.

28-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 HENRY E. DAVIS, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS. W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

ALBERT HARPER.

C. F. ROWE, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

DANIEL O'C. CALLAGHAN,

Administrator, 435 7th street, n. w.

29-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of July, 1883.**

WILLIAM W. HUDSON

CATHARINE HUDSON.

No. 8636. Eq. Dock 23.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, Catharine Hudson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, CHAS. P. JAMES, Justice  
True copy. Test: 29-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 25th day of June, 1883.**

JOHN P. FRANKLIN, Executor, &c.

VIRGINIA YOUNG ET AL.

No. 5518. Equity.

On motion of the plaintiffs, by Messrs. Bradley & Duvall, his solicitors, it is ordered that the defendant, Virginia Young, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, CHAS. P. JAMES, Justice.  
A true copy. Test: 29-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix.

W. W. BOARMAN, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix.

LEON TOBRINER, Solicitor.

29-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN HOCKMEYER ET AL.

LEOPOLD NEUMEYER ET AL.

No. 8,623. Eq. Doc. 23.

On motion of the plaintiff, by their solicitor, Messrs. Warren O. Stone and Fred. W. Jones, it is ordered that the defendant, James Henry Neumeyer, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, CHAS. P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

WARREN O. STONE and FRED W. JONES, Solicitors for Complainants.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Susan S. March St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a.

ROBERT CHRISTY, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Jane E. W. Kelly, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a.

JAMES H. SMITH, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB,

CHAS. J. LUSK,

Administrators.

29-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES SCHROTH ET AL. } No. 8311. Eq. Doc. 32.  
v.  
AMELIA MILLER.

Judson T. Cull and John A. Clarke, trustees herein, having reported sales of parts of lots 13 and 14, in square No. 642, (the same being more fully described in said report), to Nicholas Niter and George Juenemann, for \$488 and \$200 respectively:

It is, this 19th day of July, 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 9th day of August, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 29-3 R. J. MEIGS, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8595, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 28th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$500 to Robert E. Frey, as Treasurer of 12th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$800 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.  
26-6 By M. A. CLANCEY, Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 10, 1883.**

In the case of Wm. Tayloe Snyder, Executor of Edward Thornton Tayloe, late of Alabama, dec'd., the Executor aforesaid has, with the approval of the Court, appointed Monday, the 30th day of July, A. D. 1883, at 9:30 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise, the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day, and also in the "Norfolk Landmark," a newspaper published in Norfolk, in the State of Virginia.

28-3 Test: H. J. RAMSDALL, Register of Wills.

*Legal Notice.***THIS IS TO GIVE NOTICE.**

That the subscriber of Baltimore, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Ann Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

THOMAS I. HALL,  
119 Welcome Alley, Baltimore.

DANIEL O'U. CALLAGHAN } Solicitors.  
and  
W. J. WATERMAN, } 28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Chelsea, Massachusetts, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hattie V. Bennett, late of Chelsea, Massachusetts, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

PHILO H. BENNETT, Executor.  
JAMES G. PAYNE, Proctor. 28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily Johnson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

JNO. H. WHITE, Executor.  
WORTHINGTON & HEALD, Solicitors. 28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Davidson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883,

WM. H. WEST, Administrator.  
E. B. HAY, Solicitor. 28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, this 7th day of July, A. D. 1883.**

CHARLES J. KINSOLVING ET AL. } No. 8565. Equity.  
v.  
ROBERT M. JOHNSON ET AL.

On motion of the complainants, by Messrs. Hanna & Johnston, their solicitors, it is, this seventh day of July, A. D. 1883, ordered, that the defendant Thomas Jefferson Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published for three successive weeks in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 28-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jacob L. Dorwart, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

SUSAN D. DORWART, Executrix.  
VORHIES & SINGLETON, Solicitors. 27-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Egan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

MARY ANNA EGAN, Administratrix.  
WM. T. S. CURTIS, Solicitor. 28-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. July 13, 1883.**

In the matter of the Will of Robert R. Pywell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Edwin F. Pywell, one of the executors.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. D. WRIGHT, Solicitor. 28-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Sands, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

28-3 F. P. B. SANDS, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah H. B. Magruder, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

28-3 CHARLES M. MATTHEWS, Executor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Telemachus Ford, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

28-3 ALICE A. J. FORD, Executrix.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Samuel T. Ellis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

LENORA A. ELLIS, Administratrix.  
EDWARDS & BARNARD, Solicitors. 27-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Sitting as an Orphans' Court for the said District, the 2d day of July, A. D. 1883. Hagner, J.**

In re estate of Margaret Adams.

Upon reading the foregoing petition of Benjamin P. Snyder, it is ordered, that Samuel Adams, Elizabeth Mulloy, Samuel Mulloy, Eliza Arnold, William L. Arnold, George Adams, Margaret Adams and Lydia, otherwise called Eliza Ann Adams, show cause on or before the 29th day of September, A. D. 1883, why the last will and testament of the said Margaret Adams, propounded for probate by the said Benjamin P. Snyder, who is named as executor therein, should not be admitted to probate and why Letters Testamentary should not be issued to him thereon. Provided, that a certified copy of this order be published once a week for three successive weeks prior to the said 29th day of September.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: H. J. RAMSDELL,  
27-3 Register of Wills, D. C.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 6th day of July, 1883.**

BENJAMIN K. PLAIN, trading and doing business under the firm name and style of B. K. Plain & Co., Plaintiff,

No. 24,553. At Law.

MELVILLE S. NICHOLS, trading and doing business under the firm name and style of M. S. Nichols & Co. Defendant.

On motion of the plaintiff, by Mr. E. A. Newman, his attorney, it is ordered that the defendant, Melville S. Nichols, trading and doing business under the firm name and style of M. S. Nichols & Co., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. MAC ARTHUR, Justice.  
True copy. Test: 27-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. July 6, 1883.**

In the matter of the Will of Daphne Hungerford, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Susan Pierce, (Howard Pierce, executor.)

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
EDWARD D. WRIGHT, Solicitor. 27-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas L. Tullock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1883.

27-3 SEYMOUR W. TULLOCK, Administrator.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. July 13, 1883.**

In the matter of the Will of William Fessenden, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said dec'd, has this day been made by Mary Dunlevie Fessenden.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
D. W. FESSENDEN, Solicitor. 28-3



# Washington Law Reporter

WASHINGTON - - - - - August 4, 1888.

GEORGE B. CORKHILL - - - EDITOR

## The Relations of Patent Experts to the Courts.

When a case involving scientific principles comes up in the courts the custom is for each side to call to their assistance scientific experts. These are men who, on account of education and profession, are admitted to possess a peculiarly full knowledge of the scientific points involved in the issue.

They occupy an anomalous position. They are summoned nominally as *amici curiæ*, or friends of the court, to assist in its deliberations, and give it information in the special knowledge required to dispose of the questions that come before it. This assumes that they are quite disinterested and indifferent to the ultimate issue. Yet each side engages its own expert, and each of these experts takes as favorable a view as possible of his own side and runs down the other as much as possible. Although their compensation does not depend on the final decision that is reached, if they were to act as judges and not give their own side the benefit of all doubts, their occupation would soon be gone. The fact that they are in some sense advocates is recognized by the court. The fact that they are retained by one or the other side to testify in its favor is admitted.

Because it is always possible in this special class of suits to engage experts to testify on either side, a certain degree of distrust for their opinions is often expressed. The great truth is overlooked, that in not one case out of a hundred are the principles so clear that something is not to be said on both sides. Yet the complaint is continually made that the expert is too much the advocate.

Among lawyers who practice in patent suits different views of this subject obtain. Some say that they do not believe in experts. They would prefer to conduct their suits without them. The general custom is all that makes them retain them. These lawyers will often be found to be among the best of their class. They will have so good a knowledge of the principles of science, as to quickly grasp the mechanical points of a case. They could act as experts themselves, but custom requires that they should have some witness, one obliged to tell the whole truth, as a supporter of their views. Such a supporter has been found to have great weight with the court,

and to be of much influence in controlling its decision.

Some lawyers propose another system. They say that the expert should be engaged to present the views of the counsel to the court. They should not be witnesses. Their statements should be an exposition in understandable and correct form of the views of the counsel. This statement should be given as a one-sided view, and should not profess to be disinterested. Finally, it should not be given under oath. This certainly is meeting the difficulty, and justifies the expert in the most advanced position of advocate which he may be inclined to assume. Were his position recognized as this one he would still remain to a certain extent an *amicus curiæ*, while the facts of his being an advocate would be recognized as proper and right. At present this is practically his position, except that his testimony is given under oath. This places a great restraint on his direct testimony, and enables the opposing counsel to test the validity of his views by cross-examination.

There is yet another way of disposing of the difficulties of the case. It is to have experts called by the court directly, and paid by it to assist it in its deliberations. At present experts are to all intents and purposes assisting counsel. This would make them assisting judges. The idea of thus using them is quite a popular one. Many of our best lawyers advocate it. The expert would occupy a wholly disinterested position, and the decisions he reached would have every chance of being equitable and just. In this suggestion there is much that is attractive, and in a more advanced state of society it would seem worthy of being carried out.

But the same necessity which calls for advocates and lawyers to argue separately each his own side of a case calls also for experts on the separate parts of complainant and defendant. When two people come to an issue they do not go before a court and accept its unaided judgment as infallible. Each side engages its own counsel. These are officers of the court, yet are not prohibited by that fact from taking one side or the other of a case. Their duty is to do so, and he as one-sided as possible, and to carry every possible point in their client's favor. No matter how able the judge may be, his time is too important to be devoted to looking up authorities, and to studying each from the books. He sits in judgment upon the views presented him by counsel. If they are properly put forward, he in many cases can decide the case without leaving his seat. Thus business is expedited,



and the main expenses of a suit are borne by the interested parties and not by the government.

Were the court to call an expert for its guidance in special suits, and were the parties in the suit to have none, the position would be analogous to that of a court sitting in direct judgment or arbitration, with no lawyers to advocate the causes of those appearing before it. There would be no summary of the scientific questions presented. This work would fall upon the court and its expert. Business would be delayed, and a very considerable expense be placed upon the court. It would not be much better to dispense with experts than to dispense with counsel.

At present the scientific views are well presented. The experts give them in detail. They are formulated after discussion with their counsel. The counsels in their briefs and arguments summarize them, and present to the court their most salient and applicable points. The expert has been debarred by his position of witness from arguing the case. Any tendency he may exhibit in his testimony toward such a course is met by objection from the opposing counsel. All he has been able to do is to give his views as a specially qualified witness. The counsel completes the work the expert has begun. He can give the fullest license to his reasoning powers in proving his case. The argument is the supplement of the expert's testimony, and has therefore to follow it very closely. A departure from any of the views brought forward by the expert will be made to tell forcibly against the same side.

Thus it will be seen that the lawyer and expert must work hand in hand. One cannot go ahead without the other, the witness being the most restricted on account of his position. While his testimony must bear the stamp of independence, it will necessarily be partial. As this partiality is known and recognized as an attribute of expert testimony, it gives the professors of it a known standing. They are considered with justness as specially educated witnesses retained for the purpose of presenting the views of one side to the court. They should not be considered as sailing under the false colors of a pretended disinterestedness.—*Scientific American*.

THERE is a story going the rounds of the papers of a little girl who was about to put a penny in the missionary box, and being requested to repeat a verse of Scripture while dropping her gift, said: "Fools and their money are soon parted."

## Supreme Court District of Columbia GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

PHILLIP PHILLIPS *vs.* JAMES S. NEGLEY.

AT LAW. No. 22,986.

{ Decided February 19, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. This court has power, on motion, where proper cause is shown, to vacate its judgment and grant a new trial after the expiration of the term at which the judgment was rendered.

*So held*, in this case where the court on motion and cause shown vacates a judgment nearly four years after its rendition.

2. An order passed by the justice holding the Circuit, vacating a judgment rendered *ex parte*, at a previous term, and awarding a new trial upon the merits, is not an appealable order within the provision of section 722 of the Rev. Stat., D. C.

### STATEMENT OF THE CASE.

In August, 1874, the plaintiff brought suit against the defendant upon a draft alleged to have been drawn by the defendant and one Witowski upon Peck and Hovey, in favor of the plaintiff. The declaration averred due acceptance, demand upon the acceptors and non-payment and protest and notice to the drawer; the non-residence of Witowski; and it contained the common count for money had and received; and was accompanied by an affidavit explaining the ground of the action, and setting forth the draft and acceptance which are as follows:

"WASHINGTON, D. C.,

"\$4,368. May 18, 1874.

"Pay to P. Phillips the sum of four thousand and three hundred and sixty-eight dollars.

"Very respectfully,

"SIMON WITKOWSKI,

"JAS. S. NEGLEY,

Attorney for Mrs. Witkowski.

"To CHARLES F. PECK.

CHARLES E. HOVEY."

["Protested for non-payment Aug. 21, '74.—J. MCKENNEY, N. P."]

"We accept the above order, and will pay the sum therein stated out of the money received by us at the Treasury of the United States arising from a judgment in the Court of Claims in the case of Simon Witkowski, No. 3559.

"CHAS. E. HOVEY.

"I accept on the above terms, my fees being first paid.

C. F. PECK."

Endorsed : [“ P. Phillips has this day made demand on me for payment of the within acceptance, and I answered I have received no funds with which to pay.—C. E. HOVEY, Wash’gton, D. C., Aug. 20, 1874.”]

In the following October the defendant appeared by Richard Harrington, his attorney, and filed a paper partaking of the general character of a plea and affidavit of defence, which contained in detail his version of the transaction. According to this the defendant signed the draft only as attorney-in-fact of Mrs. Witkowski, with her husband, and not individually or with any intention to assume any personal liability in the premises. He insisted that the draft is the act of Mrs. Witkowski, and that he is not answerable upon the same. And further, upon information and belief, he averred that the order was given upon misinformation and under a mistaken belief that the sum of money named therein was due to the plaintiff by Mrs. Witkowski, whereas, no such sum was legally and fairly due to the plaintiff. It closes with these words : “ And this respondent denies that he is indebted to the said Phillips in any sum whatever, received or held by this defendant for the use of the plaintiff.”

No exception was taken below to any supposed insufficiency in the form of this paper, and no further step was taken in the case until the 3d of May, 1877, when the following were filed :

“ The plaintiff joins issue on said defendant’s pleas.”—W. F. MATTINGLY, attorney for plaintiff.” “ Last pleading filed May 3, 1877.—MATTINGLY, att’y for pl’ff.”

There was another interval of inaction until the 3d day of April, 1879, when, according to the record, the following proceedings took place :

“ Now comes here the plaintiff by his attorney, Mr. Mattingly, the defendant not appearing, and a jury of good and lawful men, to wit : Frederick W. Pratt, &c., who, being duly sworn, &c., say they find said issue in favor of the plaintiff, and that the money payable to him by the defendant by reason, &c., is four thousand three hundred and sixty-eight dollars, with interest from August 18, 1874, and costs.”

“ Therefore it was considered that the plaintiff recover against said defendant said sum with interest and costs, and have execution thereof.”

Nothing further was done in the case until September, 1882, when the defendant filed a motion “ to vacate the judgment and to set aside the verdict entered *ex parte* on the 3rd day of April, 1879, because of irregularity,

surprise, fraud and deceit in the procurement of said verdict and judgment, and the negligence of defendant’s attorneys.”

Two affidavits in support of the motion were read at the hearing, one of the defendant himself and the other of Richard Harrington.

Harrington swears that he was the attorney for the defendant, and filed pleas for him on the 26th day of October, 1874. That no issue was joined on said pleas or other action taken thereon at the time by the plaintiff, under the rules of the court ; and affiant understood that the plaintiff had abandoned the suit, and believes he so informed the defendant. That affiant removed from the District of Columbia about March, 1875, and has not since practiced therein, and that on such removal he undertook to notify all his clients. That having considered this case at an end, by reason of the plaintiff’s failure to join issue or take action on the pleas herein, as required by the rules of the court, he did not notify Gen. Negley of his removal.

That he never had any notice that issue was joined on the pleas, or that the case was set down for trial, or that judgment had been entered, until August, 1882, when he was notified by letter from Messrs. Edwards & Barnard.

That the plaintiff, and his attorney, Mattingly, well knew when joinder of issue and note of issue were filed, that affiant had removed from the District, and that his address was Dover, Delaware ; but, notwithstanding such knowledge, no notice was received by him, in any way, of the plaintiff’s action in the case.

Negley’s affidavit asserts in substance that he had a good and meritorious defense to the action, which was indicated in his affidavit of defense and pleas ; that he owes nothing to the plaintiff ; that his agency in the matter of the draft was merely as attorney, and that the plaintiff knew such was the case, and accepted the order without any intention of holding the defendant individually responsible for its payment ; that affiant knew nothing of the conditional character of the acceptance, and although entitled to notice of it, he received none ; that at the time the suit was brought, and ever since, the affiant was a citizen of Pennsylvania ; that, upon recommendation, he employed Harrington as his attorney and furnished him with the particulars of his defence ; that Harrington assured him after his affidavit of defence had been filed that the plaintiff could not recover a judgment against him ; and as he heard nothing further about the case until July, 1882, he had supposed the plaintiff had abandoned it ; that at the

date last named he was greatly surprised at the service of a summons to appear at a court of Alleghany county, Penn., to a suit based upon the judgment in this case; that being thus notified he made inquiries here and learned, for the first time, that Harrington had left Washington city, leaving his case without counsel, and that the judgment had been rendered in April, 1879, *ex parte*, without notice to him, and, as he is advised, irregularly, fraudulently and without proper proof, &c.

The plaintiff and Mr. Mattingly filed counter affidavits.

The plaintiff states substantially that the defendant received the fund upon which the draft was drawn, and in disregard of his duty in the premises failed to pay the order; that the proceedings were conducted in entire good faith by him and his counsel, and that the same defenses were presented in the suit in Pennsylvania, in which the plaintiff has recovered judgment.

Mr. Mattingly states that more than ten days before the May Term, 1877, he mailed to Harrington, at the place which he ascertained was his residence in Delaware, notice that the trial would take place at that term, and a similar notice to the defendant, and concluded they were received, as the letters were not returned to affiant, although his name was printed on the envelope; and that the case remained on the trial calendar from May, 1877, until April, 1879, when it was tried and judgment rendered for plaintiff.

The matter of the motion with the four affidavits was argued by counsel, and on the 2d of December, 1882, the justice holding the circuit court passed an order that the verdict and judgment of April, 1879, should be vacated and held for naught, and a new trial granted.

An exception was taken to this ruling of the court, and the bill of exceptions contains the defendant's motion and the subsequent proceedings.

JOHN SELDEN for plaintiff.

EDWARDS & BARNARD for defendant.

MR. JUSTICE HAGNER, after making the foregoing statement of facts delivered the opinion of the court.

The case has been elaborately argued by the counsel, and presents several questions of much interest.

1st. It is contended on behalf of the plaintiff that however the practice may be in the State courts, under the common law rules, the circuit courts of the United States have no

jurisdiction to strike out one of their judgments after the expiration of the term at which it was rendered, inasmuch as such authority could be exercised by a circuit court only under express statute, and no such statute exists.

Assuming, for the present, that the courts of this District possessed only the jurisdiction common to the other circuit courts of the United States, and are controlled by the limitations of power peculiar to such courts, we do not believe they would be without jurisdiction to correct and vacate their judgments, after the expiration of the term, upon proper cause shown.

We were referred confidently to the case of *Bronson v. Schulten*, 104 U. S., 410, as establishing, beyond controversy, this contention of the plaintiff. But an examination of that case has led us to a contrary conclusion.

It appears from the opinion of the court that a judgment was rendered on verdict in the fall of 1858, in the Circuit Court of the United States for the Southern District of New York, in favor of Schulten and others against Bronson, collector, for the supposed amount of an overcharge of duties paid to the collector at New York city by the plaintiff under protest.

In August, 1860, upon application of the plaintiffs, this judgment was set aside (apparently three terms after its rendition), and a new reference made; under which the judgment was so amended as to embrace thirty-four cases of erroneous charges, not comprehended in the original entry; and this amount was paid and accepted by plaintiffs shortly afterwards.

In December, 1876, another application was made to the circuit court by the plaintiff to open the judgment a second time for the purpose of including a number of additional cases of over-payment of duties, not comprehended in either previous entry; and, against the objection of the United States district attorney, the circuit court, in January, 1877, seventeen years after the rendition of the amended judgment, ordered it to be vacated, and sent the case to a referee to state the damages anew, as prayed. The report of the referee in the following March found still due a considerable sum, with interest to an amount almost as large as the principal, and the circuit court rendered judgment for these sums, with costs added. More than thirty-three terms of that court had passed since the entry of the amended judgment; but the jurisdiction of the United States Circuit Court does not appear to have been questioned in that tribunal.

On appeal, this judgment was reversed by the Supreme Court; and it is supposed that the opinion of that court, delivered by Mr. Justice Miller, announces the doctrine contended for.

If the Supreme Court had intended by that decision to settle the point in this direction, it is very astonishing it did not say so explicitly and dispose of the case in a few sentences. Surely no more flagrant case of usurpation of jurisdiction could well arise, if the position of the plaintiff is correct. Apart from the great lapse of time, and the expiration of about forty terms from that of the original judgment, and of about thirty-three terms from the date of the amended judgment, the case seems to present few equitable considerations commending it to favorable consideration. Instead, however, of disposing of it upon this obvious ground (if such is the law), the justice who delivered the opinion, and who is distinguished by his directness of expression, occupies eight pages of the report in showing, as he does, conclusively, that upon other grounds the judgment should be reversed. He announces the general rule that courts have entire control over their judgments at the term at which they are rendered; and then proceeds, in the language relied upon in the argument:

"But it is a rule equally well established that after the term has ended, all final judgments and decrees of the court pass beyond its control, unless steps be taken during that term, by motion or otherwise, to set aside, modify, or correct them."

In the following paragraph he continues:

"But to this general rule an exception has crept into practice in a large number of the State courts in a class of cases not well defined, and about which, and about the limit of this exception, these courts are much at variance, . . . which has its foundation in the English writ of error *coram nobis*, a writ which was allowed to bring before the same court in which the error was committed some matter of fact which had escaped attention and which was material in the proceeding."

After discussing at length this exception, he proceeds to state that:

"There has grown up in the courts of law a tendency to apply to this control over their own judgments, some of the principles of the courts of equity, in cases which go a little further in administering summary relief than the old-fashioned writ of error *coram nobis* did. That this practice has been founded in the courts of many of the States on statutes which confer a prescribed and limited con-

trol over the judgment of a court after the expiration of the term at which it was rendered; but in other cases the summary remedy by motion has been granted as founded in the inherent power of the court over its own judgments, and to avoid the expense and delay of a formal suit in chancery."

And the learned judge then declares that neither the statute of New York, nor the decisions of its courts upon the subject, are binding upon the courts of the United States held therein, and adds:

"The question relates to the power of the courts, and not to the mode of procedure. It is whether there exists in the court the authority to set aside, vacate and modify its final judgments after the term at which they were rendered; and this authority can neither be conferred upon nor withheld from the courts of the United States by the statutes of a State or the practice of its courts."

Having considered at length the grounds upon which courts of chancery interfered to set aside judgments after the term, he asks:

"Does the power of the court over its own judgment, exercised in a summary manner on motion, after the term at which it was rendered, extend beyond this?"

The court of which he was speaking was the Circuit Court of the United States for the Southern District of New York; and it is inconceivable that the Supreme Court would have assumed the task of examining the facts to ascertain whether they brought the case within the limit of these equitable principles, if it had intended to decide, as was contended before us, that a circuit court of the United States was wholly without jurisdiction to give relief.

The judge proceeds: "We are also of opinion that the general current of authority in the courts of this country fixes the line beyond which they cannot go in setting aside their final judgments and decrees on motion made after the term at which they were rendered, far within the case made out here. If it is an equitable power supposed to be here exercised, we have shown that a court of equity, on the most formal proceeding, taken in due time, could not, according to its established principles, have granted the relief which was given in this case."

And the decision of the court, reversing the order below was placed solely upon the ground of the gross laches of the plaintiffs, and their acquiescence during seventeen years in the correctness of a judgment which had already once been amended at their instance, and afterwards had been paid to them, when the alleged error was easily discoverable by a com-

parison of their own papers, during all this time. "Having been negligent originally, and having slept on their rights for many years, they show no right, under any sound practice of the control of courts over their own judgments, to have that in this case set aside."

We have examined this case at large, be cause of the earnestness with which it was pressed upon us as decisive of the want of jurisdiction in the United States court in this class of cases; but in our opinion, so far from deciding the principle contended for, it may well be invoked as an authority in support of that jurisdiction.

And such we understand to have been the ruling of the Supreme Court as far back as 1824, in the case of *Walden v. Craig*, 9 Wheaton, 576; in 1832, in *Boyle v. Zacharie*, 6 Peters, 648; in 1833, in *Pickett v. Legerswood*, 7 Peters, 147; and again, in 1852, in *Harris v. Handeman*, 14 Howard, 337.

In *Walden v. Craig*, the circuit court of the United States for Kentucky in 1821, refused to strike out a judgment in ejectment rendered in 1800, to enlarge the term stated in his declaration. From this order of refusal a writ of error was sued out to the Supreme Court. Chief-Justice Marshall, speaking for the Court, states the first question to be: "Ought the circuit court to have granted leave to the plaintiff to extend the term laid in his declaration?" And answers for the Court in these words: "The cases cited by the plaintiff's counsel, in argument, are, we think, full authority for the amendment which was asked in the circuit court, and we think the motion ought to have prevailed." And this after twenty years had intervened since the expiration of the judgment term. The case in 14 Howard is as follows:

In 1839 Harris recovered judgment against Hardeman, in the Circuit Court of the United States for the Southern District of Mississippi, by default, for want of appearance. In 1840 a *feri facias* was issued on this judgment and levied upon the property of Hardeman, and a forthcoming bond was executed by him, with sureties, to prevent the sale of the property levied on.

At the May Term, 1850, eleven years after the rendition of the judgment, Hardeman and the sureties made an application to quash the forthcoming bond and set aside the judgment on which the bond was founded, upon the ground that there had never been a proper service of process upon Hardeman in the original case. The circuit court granted the motion, and on appeal the decision below was affirmed by the Supreme Court. In speaking of the

jurisdiction of the court below to strike out the judgment, upon motion, the court says: "It is believed to be the settled modern practice, that in all instances in which irregularities could formerly be corrected upon a writ of error *coram nobis*, or *audita querela*, the same objects may be effected by motion to the court as a mode more simple, more expeditious, and less fruitful of difficulty and expense."

The idea that courts of the United States have smaller powers in this particular than the courts of the States, does not seem to have then occurred to the Supreme Court. And it would be a most unfortunate necessity that would compel a court of the United States to declare itself powerless to set aside one of its own judgments, which had manifestly been obtained by fraud, deceit, irregularity or suspense, merely because the motion was made after the expiration of the term, and thus allow its process of execution to be prostituted by the perpetrator of the fraud to the oppression of a citizen. For if the circuit courts of the United States are without authority to interpose at law in such a case because no statute has been passed granting the explicit authority, the sufferer would be practically remediless, as no State court could interfere in such a case with the judgment of a court of the United States. Although the exercise of this wholesome jurisdiction is regulated in some of the States by statute, we are clearly of the opinion that it must exist in every court of record as an inherent power, indispensable to prevent a failure of justice and the abuse and perversion of its judgments for unjust ends. And we can see no reason of policy or propriety why the courts of the United States should be so grievously enfeebled for good, as they would be, if this power were denied them.

An examination of such of the reports of the decisions of the circuit courts as were accessible since the argument shows that this power has been exercised by their judges from time to time. Thus in *Sheepshanks v. Boyer*, Baldwin's C. C. R., 462, a judgment rendered by default at a previous term was stricken out on motion of an attorney representing that he had ordered his appearance to be entered by the clerk, who had neglected to make the entry, and this without reference to merits in the defense.

In *Den, ex dem., &c., v. McAllister*, 4 Wash. C. C. R., 393, it was decided that a judgment by default against the casual ejector for want of appearance may be set aside at a subsequent term upon good cause shown by affidavit of merits.

In *Albree v. Johnson*, 1 Flippin, 341, a

judgment was rendered in September, 1868, in the Circuit Court of the Northern Circuit of Ohio, against a female defendant named Johnson. Six years afterwards, application was made by Johnson and his wife, who according to the affidavits, was the sole defendant in the judgment, and was a married woman when it was rendered, upon the ground that it was, for this reason, void. The application was presented by petition for a writ of error *coram nobis*, and also by motion; and Walker, circuit judge, apparently entertaining no doubt as to his jurisdiction to interfere under one form of proceeding or the other, examines which is the appropriate mode of redress. After citing a number of cases on the subject (among them *Harris v. Harde-man*, 14 Howard), he says: "These authorities, it seems to me, clearly show that errors in fact can be reviewed on writ of error *coram nobis*, and that among the errors of fact against which relief will be granted, is coverage of the defendant at the time of the judgment. Can the same thing be effected by a motion for that purpose supported by affidavit."

After a particular examination of the authorities upon this latter point, he concludes: "These cases in the Federal courts seem to settle that errors in fact may be reached as well by motion as by writ of error *coram nobis*." And the court accordingly set aside the execution which had been issued, struck out the judgment, and admitted the defendant to plead.

In *Dawson v. Daniel*, 2 Flippin, 301, the court, while not questioning its jurisdiction to strike out a judgment rendered in the Circuit Court for the State of Tennessee, after the expiration of the term, declares that the motion will not prevail unless the defendant can show he was guilty of no negligence, and has a meritorious defence.

The unreported case of *Palmer v. Embry*, which has been brought to the attention of the court by the plaintiff's counsel since the argument, is not in conflict with the decisions we have referred to. This was a suit in equity to set aside a judgment obtained in Connecticut upon a judgment recovered in the District of Columbia, and the decision of the Supreme Court refusing the relief was based, as in the case of *Bronson v. Schultzen*, upon the laches of the complainant, and not upon any idea of the want of jurisdiction in the United States courts to protect litigants from the fraud or misconduct of other suitors, by striking out a judgment, after the term, on motion.

2d. But even if this jurisdiction did not reside in other courts of the United States,

we think it undoubtedly is possessed by the Supreme Court of the District of Columbia. It is true this is a United States court, clothed with all the ordinary jurisdiction of United States circuit and district courts; but its power and jurisdiction are far more extensive than that of those courts.

By the act of February 27, 1801, the Circuit Court of the District of Columbia was created with "all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States;" and by the act of April 29, 1802, a district court for this District was created with all the powers and jurisdiction by law vested in the other district courts of the United States. And by various acts of Congress since 1801, further jurisdiction was committed to the courts existing within the District of Columbia. But besides this ordinary jurisdiction, the courts of the District are possessed of that large mass of powers which they received under the act of Congress which declared that the laws of the State of Maryland, as they existed in February, 1801, should continue in force here; which embraced, as decided by the Supreme Court, the common law of England, as then existing in Maryland. It was in virtue of this grant that the right of the Circuit Court of the District of Columbia to issue a mandamus was sustained in *Kendall's case*, as one of the powers incident to the highest court of common law jurisdiction, though denied to every other circuit court in the United States.

Nor is it the result of this legislation to create, as was argued, effectively two courts, or two separate divisions of one court; one clothed with distinct federal jurisdiction, and the other with the common law powers derived from Maryland. The powers are merged, and the court acts as a single tribunal with the authority accumulated from these different sources. And we hold it to be perfectly clear, that this court derived from the Maryland law, if it did not possess it in common with the other courts of the United States, entire power to strike out its judgments for proper cause shown, on motion, after the expiration of the term.

That such was the practice of the Maryland courts in February, 1801, cannot be denied. The power was expressly recognized by the act of 1787, c. 9, s. 6, as one previously existing, independently of any statute; either as a common law power or as inherent in the constitution of courts of justice. The reported cases where this power has been exercised by the courts of that State are very numerous, and in one of the later cases, *Tiernan v. Hammond*, 41 Md., was exercised after eleven years

had elapsed from the rendition of the judgment.

It therefore follows, as a necessary consequence that the same power was possessed by the first circuit court established in the District in 1801; and has devolved upon its successors in turn.

There is abundant evidence at hand that it has been exercised on repeated occasions by our predecessors in this District.

In the case of *Sherburne v. King*, 2 Cr. C. C. R., 205, the court reinstated an action of replevin, which had been discontinued at the previous term, because the clerk had omitted to enter the appearance of the defendant's attorney.

In *McCormick's Lessee v. Magruder*, 2 Cr. C. C., 228, judgment was entered at December term, 1819, against the casual ejector by default, and a writ of *habere* issued to April term, 1821. At this term, Mr. Taney moved to quash the execution and rescind the judgment, upon affidavits that Mr. Marbury had ordered the clerk to enter his appearance before the judgment was entered, but the clerk, by mistake, had entered it in another case; and the court granted the motion, quashed the *habere* and rescinded the judgment, with leave to the tenant to plead.

In *Union Bank of Georgetown v. Crittenden*, 2 Cr., 238, judgment was entered at June term, 1820, for want of a plea, and at April term, 1821, Mr. Redin moved to quash the execution and set aside the judgment because the clerk had omitted to enter an appearance for the defendant, although directed to do so by an attorney. Mr. Jones resisted the motion and insisted that a court will not correct its judgment after the term; but the court, *nem. con.*, granted the motion.

In *Ault v. Elliott*, 2 Cranch C. C., 372, a judgment was entered by confession against Morte, at December Term, 1819, without a declaration or rule to declare or plead. At the April Term, 1823, a *sci. fa.* was returned against Elliott who was special bail for Morte; and Mr. Redin moved to set aside the original judgment for the irregularities mentioned and to quash the proceedings against the bail; and the court ordered accordingly at the June term, 1824, four years and six months after the entry of the judgment.

In *Ringgold v. Elliott*, 2 Cranch C. C., 462, judgment was rendered for Ringgold in an action of replevin brought by Patterson, at October Term, 1823. Ringgold brought suit against Elliott as surety on the replevin bond, and at April term, 1824, Elliott moved to set aside the judgment in the replevin suit, because the verdict was rendered in that case

at the trial, without a declaration having been filed. The court ordered the judgment to be set aside.

In the same volume, page 682, is to be found the case of *Baker v. Glover*. This was a bill in equity brought at the May term, 1826, by the complainant and another, as garnishees of Smith. It averred that at June term, 1818, a judgment of condemnation by default was entered against the complainants as garnishees; that they had failed to appear through ignorance, relying upon the fact that they had no funds of the defendant Smith in their possession; and that the proceedings were irregular and void for various reasons; and the bill prayed for an injunction to restrain the levy of an execution issued upon the judgment.

After answer it was contended by Mr. Morfit, upon the argument, that the complainants had no redress in equity, as they had a full remedy at law by motion to strike out the judgment at law against the garnishees for irregularity and surprise. Mr. F. S. Key, who had filed the bill, thereupon made a motion to quash the execution and set aside the judgment for irregularity; but the case abated before hearing, by the death of the defendant. The report is instructive as showing that Mr. Key made no reply to the argument that his remedy was at law, by motion to strike out the judgment, which, if correct would have been fatal to his bill, thus, conceding the correctness of Mr. Morfit's position, although nearly eight years had elapsed since the rendition of the judgment of condemnation.

In *Reiting v. Bolier*, 3 Cranch, 212; at the December term, 1827, the defendant's counsel moved to set aside an interlocutory judgment by default and quash a writ of inquiry issued at the preceding term, upon affidavit of merits, &c. The court, upon examination of the cases in the District, including some not referred to by us, granted the motion.

What were the views of the old circuit court on this subject, therefore, admits of no doubt. Nor can there be a question that this court, as now constituted, has repeatedly exercised the same power without question. In the unreported case of *Palmer v. Embry*, before referred to, it appears that the judge holding the circuit court struck out a judgment rendered in the course of that litigation, after the term had passed. The Rules Nos. 89 and 90, recognize the motion, with reference to the causes specified in the Maryland act of 1787, ch. 9, § 6; and evidently refer, as that act did, to motions made after the expiration of the term.

So far then from holding that the act of Mr. Justice Mac Arthur in taking jurisdiction of the motion to vacate the judgment, was an usurpation of authority on his part, as asserted in the argument before us, we have no hesitation in declaring that he was exercising a plain power of the court, as undoubtedly belonging to him as any other jurisdiction with which the Supreme Court of this District is endowed.

3d. The next question arises upon the motion of the defendant to dismiss the appeal.

The order below vacated the judgment rendered *ex parte*, and awarded a new trial to the defendant upon the merits. Is this an appealable order, within the meaning of the provisions of sec. 772 of the Revised Statutes of the District of Columbia, which declares that "any party aggrieved by any order, judgment, or decree, made or pronounced at any special term, may, if the same involves the merits of the action or proceeding, appeal therefrom to the General Term of the Supreme Court?" And this depends upon the fact whether the order of the court below was one which involved the merits of the action or proceeding, within the meaning of the statute.

It is plain that the justice, by passing the order, neither decided that the defendant was entitled to a verdict, nor that the plaintiff had no right to recover upon the merits. His order was predicated on the idea that there had in fact been no real hearing of the case; and its purpose was to enable the parties to obtain what the law was designed to secure them—a trial upon the merits. The rulings of the court upon questions of law in such a trial, would involve the merits of the action; but an order that the case should be placed in a position where such rulings might be had, cannot in any just sense be so considered. In loose words, almost any interlocutory order in a case, as for a continuance, a bill of particulars, an amendment of pleadings, a rule, security for costs, or an order overruling such motions, may, when tested by the result in the particular case, be said to have affected the merits, since the subsequent judgment may appear to have been the consequence of the order complained of. But, by no just use of language could it be said that the final determination of the case, on its merits was involved by such interlocutory order since the decision upon the merits, by court or jury, would be entirely unaffected by any such antecedent incidental proceedings.

The definition of the word "involve," which would best support the idea of the appealability of the order, is, "to connect by way of natural consequence or effect;" and this could

not be held to embrace an order merely authorising the parties to present their proofs before a jury, which is to render a verdict according to the justice of the case, without knowing, necessarily, that there had ever been a previous *ex parte* trial and verdict. It seems a contradiction of terms to declare that an order directing a hearing upon the merits, because the merits had never been heard, is in fact an order involving the merits; and this view seems to be plainly in conformity with the practice of this court, in kindred cases. Our General Rule No. 60 contains an enumeration of the grounds upon which a party may move for a new trial; and among them are: 1st, "that the party making motion had no notice, and did not appear at the trial." 2d, "misbehavior of the successful party." 16th, "that the verdict was obtained by surprise;" each of which grounds is relied upon in the present motion; and the rule proceeds: "These motions are addressed to the discretion of the justice presiding at the trial, and are not appealable." Although the rule was designed especially to apply to motions made shortly after the trial, the order before us would seem to be properly within the reason of its sensible provisions.

But apart from this rule, the practice of this court does not support the idea that this is an appealable order.

In *Driggs v. Daniels*, 2 Mac A., 255, the plaintiff applied for an order directing the delivery to his solicitor of \$25,000 of certificates deposited with the clerk under a stipulation that they should be held subject to claims of creditors for a specified time which had expired. It seems that the creditors had filed their claims in another suit; but the plaintiff insisted that as they were not filed in the principal case he was then entitled to the certificate. The court below refused to pass the order, and an appeal was taken, which on motion, was dismissed by the court, which said: "The order appealed from determines no question involving the merits of the action. The refusal to deliver the certificates is an intermediate proceeding, and its regularity can only come before us on a final judgment or decree."

In *Adams v. Adams*, 2 Mac A., 276; the lower court passed an order overruling a motion that a trustee be required to give bond and be restrained from selling the trust property without the previous order of the court. An appeal was taken from this order to the General Term. An application was there made to dismiss the appeal for the reason that the order below did not involve merits of the action or proceedings. "The court was



of that opinion and the appeal was accordingly dismissed."

So in *Bryan v. Sanderson*, 3 Mac A., 402, it was decided that no appeal lies from an order awarding or refusing a writ of assistance. And in *Parson v. Parker*, 3 Mac A., 9; a similar ruling was made with respect to orders overruling or sustaining demurrers, with leave to amend or answer over.

The orders in each of the cases cited may possibly have power fatal to the recovery of the party against whom it was passed, but such would not be its "natural consequence or effect." In *Parson v. Parker*, Mr. Justice Olin defines the terms employed in section 772, as follows: "An order, judgment or decree involving the merits of a case is therefore such and such only, as, if not set aside or reversed, will put an end to the suit or controversy. To hold the contrary would render every order made either at law or in equity appealable. It is difficult to conceive that any order made in the course of judicial proceedings may not, to some extent, in a greater or less degree, affect the merits of the case."

That a motion for a new trial, at common law was addressed to the sound discretion of the presiding judge, and was not appealable, has been recognized by this court as a factor in its construction of the law of appeals.

*Phillips v. Gardner*, 1 Mac A., 165; *U. S. v. Wood*, 1 Mac A., 241.

In the Supreme Court in the case of *Connor, alias Van Ness, v. Peugh's Lessee*, 18 How., 395, a motion was made to dismiss an appeal taken by Mrs. Connor from the refusal of the circuit court of the District of Columbia, to set aside a judgment at law rendered against her at a previous term, and quash the execution thereon. The motion prevailed, and Mr. Justice Grier, announcing the judgment of the court said: "The motion afterwards made to have the judgment set aside, and for leave to intervene, was an application to the sound discretion of the court. To the action of the court, on such a motion, no appeal lies, nor is it the subject of a bill of exceptions or writ of error."

It is worthy of notice that the able counsel in that case, who opposed the motion to strike out the judgment, made no suggestion of any want of jurisdiction in the circuit to pass such an order.

In *Wylie v. Cox*, 15 Howard, 1, an appeal was taken from the refusal of the circuit court of this District, in equity, to open a decree and grant a rehearing. In discussing this appeal the Chief Justice says: "In relation to the order, it is plain that no appeal will lie from the refusal of a motion to open

the decree and grant a rehearing. The decision of such a motion rests in the sound discretion of the court below, and no appeal will lie from it."

These decisions are in entire sympathy with numerous cases in the Supreme Court where that tribunal has refused to entertain appeals from orders or decrees which did not "put an end" to the suit below, and were therefore not final in the sense of the act of 1789; and because the passing of the order was within the sound discretion of the court below, and therefore not examinable on appeal.

Thus in *Walden v. Craig*, 9 Wheaton, 576, before referred to, after stating the court below should have granted the motion to amend the judgment, Chief-Justice Marshall said: "But the course of this court has not been in favor of the idea that a writ of error will lie to the opinion of a circuit court, granting or refusing a motion like this. No judgment in the cause is brought up by the writ, but merely a decision on a collateral motion, which may be renewed. For this reason the writ of error must be dismissed."

Again in *Boyle v. Zacharie*, 6 Peters, 648, it was held that the refusal of a circuit court of the United States to quash a *vend. exp.* was no ground for a writ of error to the Supreme Court. The court said: "We consider all motions of this sort to quash executions as addressed to the sound discretion of the court, and as a summary relief which the court is not compellable to allow."

In *Pickett v. Legerwood*, 7 Peters, 147, a writ of error was brought from the judgment of the Circuit Court for Kentucky, rendered on a writ of error *coram vobis*, correcting an error in a judgment given at a previous term of that court.

"The motion here," says Mr. Justice Johnson, "is to quash the writ of error, upon the ground that it is an exercise of jurisdiction in the court below which does not admit of revision in this tribunal, . . . and is therefore subject to the same exceptions which have always been sustained in this court against revising the interlocutory acts and orders of the inferior courts."

The court proceeds to state that the writ of error *coram nobis* is now generally superseded by motion; that the proceeding, where in force, "is not one of those remedies over which the supervising power of this court is given by law;" and, in conformity with the decision in *Walden v. Craig*, declares that the judgment of the court below opening a judgment rendered many years previously, could not be examined, in error, by the Supreme Court. See also *Van Ness v. Van Ness*, 6

Howard, 62; Grant v. Phoenix Ins. Co., 106 U. S., 429.

4th. The order below does not require the continuances to be entered on the docket, as is directed by the act of 1787, ch. 9, § 6, and it is insisted that this omission is assignable as error.

The point is immaterial at this stage of the case, but as matter of practice it may be said that it would be proper such entries should be made on the docket before the case goes to trial again, though the want of the continuances is aided by the appearance of the party. 2 Sellon, 336.

They can perfectly well be made now, and without any injury to the plaintiff. In the two cases in 2d Harr. & Gill, cited by the plaintiff's counsel, the court below had ordered the judgments to be stricken out, without directing a new trial to be had, and the plaintiff would therefore have been compelled, in those cases, "not only to pay the costs of the action, but to begin *de novo*," exposed to the chances of a plea of the statute of limitations. Such is not the predicament of the plaintiff here, for the order expressly directs the case to be tried anew.

The appeal is dismissed.

*Contract: Breach; Damages; Recoupment.*—Whenever a party seeks to recover on a contract which he has broken, the defendant may recoup the damages he has sustained by reason of the breach.

*Ibid.: seduction by employee; recoupment.*—The defendant hired A to work for him at certain monthly wages, living in his family. While in the service he seduced the defendant's minor daughter, and got her with child. *Held*, In an action for the wages, that the defendant could recoup damages for the seduction. [Bixby v. Parsons. S. C. of Errors of Connecticut.]

*Married woman: creating separate estate.*—In order to create a separate estate of a married woman at common law or under the statute, no specific words are necessary, but the language of the deed must clearly manifest an intention to place the property beyond the use and control of the husband.

*Ibid.: mortgage.*—Although a wife cannot mortgage her separate estate for the debt of her husband, she may, under her power of appointment, mortgage it for her own.

*Res adjudicata: dismissal "without prejudice."*—A dismissal of the petition "without prejudice" leaves the parties as if no action had been instituted, and does not operate as *res adjudicata*. [McGill v. Mercantile Trust Co. Ct. of Appeals of Kentucky.]

## The Courts.

### CRIMINAL COURT.—Justice Wylie.

JULY 6, 1883.  
U. S. v. Henry W. Fenner. Indicted for the murder of Samuel Nugent. Verdict not guilty by reason of insanity.

JULY 7, 1883.  
U. S. v. Benjamin F. Bigelow. Indicted for embezzlement. Motion for continuance granted.

JULY 9, 1883.  
U. S. v. Katie Howard. Information for bawdy house. Verdict guilty. Motion for new trial.

JULY 10, 1883.  
U. S. v. Richard J. Marshall. Information for bawdy house. Verdict guilty. Motion for new trial.

U. S. v. John Coughlin. Information for violating pharmacy law. Verdict not guilty.

U. S. v. Geo. McCauley and William Walsh. Indicted for assault with intent to kill. Verdict not guilty.

JULY 11, 1883.  
U. S. v. Thomas McLane. Indicted for assault with intent to kill. Verdict not guilty.

U. S. v. Robert Johnson and Abraham Banks, &c. Indicted for house breaking in night. Nolle pros.

U. S. v. Andrew Jackson. Information for larceny. Verdict not guilty.

U. S. v. John W. Clark. Information for policy. Plead guilty and fined \$250.

JULY 12, 1883.  
D. C. v. Francis Leonard. Information for unlicensed bar. Plead guilty and fined \$105.

U. S. v. Benjamin Thomas. Information for assault. Plead guilty and fined \$6 and costs.

U. S. v. Wm. L. Riley. Information for policy. Verdict not guilty.

U. S. v. Edward Lilley. Verdict guilty. Sentenced to jail for six months.

JULY 13, 1883.  
U. S. v. Walter McKenney. Indicted for house breaking in night. Plead guilty and sent to reform school.

U. S. v. Elizabeth Brown, &c. Indicted for larceny. Nolle pros.

U. S. v. Olmstead Ward, &c. Indicted for murder and convicted of manslaughter. Sentenced to penitentiary for two years.

U. S. v. John Skivington. Indicted for burglary and larceny. Nolle pros.

U. S. v. Wm. Foreman and Andrew Harris. Indicted for assault with intent to kill. Motion for new trial overruled and sentenced to the penitentiary for 8 years.

U. S. v. Ellen Duvall. Indicted for larceny. Nolle pros.

U. S. v. Richard J. Marshall. Information for bawdy house. Motion for new trial.

Samuel C. Mills, justice of the peace, nominated to act and perform the duties of Judge of the Police Court in the absence of Judge Snell.

JULY 14, 1883.  
U. S. v. Katie Howard. Information for bawdy house and conviction. Sentenced to pay \$50 and costs.

U. S. v. Richard J. Marshall. Information for bawdy house. Motion in arrest of judgment.

JULY 18, 1883.

U. S. v. Wm. P. Kellogg. Indicted for illegally receiving money whilst a Senator of the U. S. Demurrer to the defendant's pleas 1 to 7 inclusive, sustained. Defendant excepts.

U. S. v. Charles E. Prentiss. Indicted for embezzlement, &c. Demurrer to pleas 2 and 3 sustained. Defendant excepts.

U. S. v. John W. Coomes. Indicted for receiving stolen property. Demurrer to pleas sustained, and defendant excepts.

U. S. v. Geo. O. Miller. Indicted for receiving stolen property. Two cases. Motion to quash overruled. Defendant excepts.

U. S. v. Geo. O. Miller. Indicted for larceny. Motion to quash overruled. Defendant excepts.

U. S. v. Richard J. Marshall. Information for bawdy house. Motion in arrest of judgment not granted.

JULY 19, 1883.

U. S. v. Wm. P. Kellogg. Indicted for illegally receiving money whilst a Senator of the U. S. Affidavit of the appointment of Wm. W. Ker as a special assistant U. S. attorney for D. C. filed *nunc pro tunc* as of June 18, 1883.

JULY 23, 1883.

U. S. v. Wm. P. Kellogg. Indicted, &c. Motion to quash argued and submitted.

JULY 30, 1883.

U. S. v. Wm. P. Kellogg. Indicted, &c. Motion to quash overruled. Defendant excepts. Adjourned to October 8, 1883.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

JULY 28, 1883.

34659. Annie M. Farley v. Edward Rady. Plea of title. Pliffs attys, Edwards & Barnard.

JULY 30, 1883.

24640. John H. Platt et al. v. Carrie B. Evans, administratrix. Damages, &c. Pliffs attys, Worthington & Heald.

24641. Daniel W. Schoonmaker v. Carrie B. Evans, administratrix. Account, \$3,800. Pliffs attys, Worthington & Heald.

24642. Allen O. Clark v. Edward L. Scott et al. Judgment of Justice Hall, \$40.47.

24643. Same v. Henry O. Bolde. Judgment of Justice Hall, \$37.03.

JULY 31, 1883.

24644. Winfield S. Jenks et al. v. Wallace J. Belding. Account, \$189.80. Pliffs attys, B. F. Leighton.

24645. Richard H. W. Reed v. Elias E. White. Slander, \$50,000. Pliffs attys, Payne & Payne. Defs attys, Davidge and Totten.

AUGUST 1, 1883.

24646. James F. Brien v. Walter M. Pumphrey. Notes, \$650.80. Pliffs attys, A. B. Duvall.

24647. Same v. Zachariah Dowling. Note, \$100. Pliffs attys, A. B. Duvall.

24648. Alice V. Boone v. The District of Columbia. Damages, \$10,000. Pliffs attys, Moore and Carrington.

24649. Maximilian A. Dauphin v. John Q. Thompson. Libel, \$50,000. Pliffs attys, Jeff Chandler.

24650. Samuel Ocas v. Samuel T. Luckett. Replevin. Pliffs attys, D. O'C. Callaghan.

AUGUST 2, 1883.

24651. The District of Columbia v. William Smith. Certiorari. Defs attys, Wm. A. Cook.

24652. Same v. The Washington Gas Light Co. Certiorari. Defs attys, W. B. Webb.

24653. James S. Edwards et al. v. James H. Skidmore. Account, \$116. Pliffs attys, Job Barnard.

24654. Same v. Margaret Flynn. Account, \$111. Pliffs attys, Job Barnard.

AUGUST 3, 1883.

24655. William A. Cook v. Carrie B. Evans, administratrix. Account, \$6,850. Pliffs attys, L. G. Hine.

24656. Barbara Waters v. Chas. Ware. Damages, \$1,000. Pliffs attys, C. Carrington.

### IN EQUITY.—New Suits.

3663. In re John H. Smith, upon petition of Amanda Reid. De lunatico inquirendo. Com. sol., Belva A. Lockwood.

AUGUST 3, 1883.

3667. Bennett B. Smith v. William T. Bailey et al. Injunction. Com. sol., Thomas F. Miller.

3668. John J. Calvert v. Paul Eaton et al. For release. Com. sol., Jesse H. Wilson.

### PROBATE COURT.—Justice James.

JULY 14, 1883.

Will of Edward Hammersley; proven by two witnesses and admitted to probate, executrix bonded.

Charles H. Wiltberger, guardian; bonded.

JULY 16, 1883.

Will of James T. Peake; filed for probate.

Susan E. Porter, guardian; bonded.

Estate of Elizabeth Meller; administrator c. t. a. bonded.

Estate of Edward T. Taylor; letters filed.

Estate of Susan S. March; will admitted to probate; letters granted and administrator c. t. a. bonded.

Estate John W. Starr; petition for modification of order.

JULY 17, 1883.

Estate of Susan S. March, administrator c. t. a.; qualified.

Estate of Francis Dalton; same.

Estate of James A. McLaughlin; administratrix c. t. a. qualified.

Estate of Eliab Kingman; caveat delivered to attorney for caveator.

Estate of Washington Danforth; proof of publication. Order nisi made final and administrator appointed and bonded.

Will and codicil of Isabella Davis; filed and fully proved.

Estate of John W. Starr; executrix gave conditional bond.

Estate of James Murt; citation against widow directed.

Estate of Robert B. Wagner; administrator bonded and qualified.

Estate of John Keithley; executor's bond completed.

Albert Harper, guardian; partly bonded.

JULY 18, 1883.

Estate of Charles Case; receipt for registered letter filed.

Estate of Jane E. W. Kelly, administrator c. t. a.; qualified.

Estate of James Murt; citations served.

Daniel Murray, guardian; release of ward filed.

Estate of Edward Hammersley; executrix bonded and qualified.

JULY 19, 1883.

Estate of Washington Danforth; administrator bonded.

Will of Mary A. Gadsby; filed for probate.

Will of Henrietta D. Handy; filed for probate.

Estate of C. Ewing; inventory returned by administrator.

Estate of John B. Milnor; receipts for guardians of money distributed, and final account of administrator.

JULY 20, 1883.

Estate of Lawrence B. Byrne; administrator's bond completed.

Estate of Washington Danforth; administrator's bond completed.

Estate of Isabella Davis; will and codicil admitted to probate and letters granted.

Estate of George Washington; petition for sale granted.

Estate of Robert Davidson; inventory returned by administrator.

Estate of Mary L. Talbot; title of land warrant vested in executor.

Estate of Martha A. Young; administrator appointed and bonded.

Thomas Barry, guardian; order to show cause, &c.

Estate of Sarah A. Keating; administrator appointed and bonded.

Estate of Henrietta D. Handy; will fully proved, admitted to probate and letters granted.

Estate of Philip Meredith; will proved by one witness.

Estate of Catharine Miller; orders appointing commissioners to take testimony of witnesses to will.

Estate of Bennett Lee; administratrix appointed and bonded.

Estate of John W. McOlland; petition for letters filed.

Estate of John J. F. Joachim; referred to auditor to state account.

Louisa K. Camp, guardian; bond completed.

Accounts passed:

Estate of Wm. Douglas; first account of executor.

Estate of Edwin W. Latimer; first account of administrator.

Estate of Wm. Nottingham; first account of executor.

Estate of Gottlieb Rumpf; final account of executor.

Clementine Bridwell, guardian; final account.

Annie Donnelly, guardian; third, general and individual accounts.

Daniel Murray, guardian; final account.

JULY 21, 1883.

Estate of Henrietta D. Handy; administrator bonded.

Estate of John W. Starr; widow gave additional bond.  
Estate of Isabella Davis; administrator bonded and qualified.

Estate of John J. F. Joachim; referred to auditor.  
Will of Philip Meredith; proved by second witness.  
Will of Catharine Miller; commissioners to take depositions of witnesses to will sent by letters.  
Will of Thomas Keating; filed for probate.  
Will of Cornelius O'Donnoghue; same.  
Estate of Charles Ewing; sale ordered.

JULY 23, 1883.

Estate of Sarah W. Parris; petition of executor and order of sale.

Estate of Emma B. Thomson; exception to passing final account of executor overruled.

### Legal Notices.

#### THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Philip Meredith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1883.

her  
ELIZABETH M. FULTON,  
mark. Executrix.

Witness: GEO. E. JOHNSON.  
A. B. WILLIAMS, Solicitor 31-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JAMES CORNELIUS ET AL. }  
v. } Eq. 7,919. Doc. 21.

JOSEPHINE DE VAUGHN ET AL. }  
v. }  
Upon consideration it is by the court this 30th day of July, 1883, ordered, that the sales reported this day by W. Wheeler and E. H. Thomas, trustees, to Sarah M. Evans, of property mentioned in said report and to James A. Hunt, of property mentioned in said report, be ratified and confirmed on the 1st Tuesday in September next, unless cause to the contrary be shown on or before said last mentioned day. Provided, a copy of this order be published once a week for each of three successive weeks on or before said day in the Washington Law Reporter, and provided, that a copy of said trustee's report and of this order be served within one week from this date on said James A. Hunt. And it is further ordered and decreed that said trustees pay all taxes and assessments, out of any money other than the money in their hands arising from said above reported sales, on property mentioned in this cause, and heretofore sold by them, as far as the said money in their hands will go.

By the Court. CHAS. P. JAMES, Justice.  
True copy. 31-3 Test: R. J. MEIGS, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Caroline C. Denham, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

31-3 LEMUEL J. DENHAM.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. August 3, 1883

In the matter of the Will of Bernhard Berens.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of Bernhard Berens, of the District of Columbia, has this day been made by Magdalena Berens.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of August next, at 11 o'clock a.m., to show cause why probate of said will and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 31-3 H. J. RAMSDALL, Register of Wills.

### Legal Notices.

#### THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cornelius Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

THOMAS J. LUTTRELL, Executor.  
HINE & THOMAS, Solicitors. 31-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 28th day of July, 1883.

MARY JOSEPHINE KEYES }  
v. } No. 8556. Eq. Doc. 28.

RICHARD THORNTON KEYES. }  
On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Richard Thornton Keyes, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 31-3 Test: R. J. MEIGS, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JAMES F. HALIDAY ET AL. }  
v. } No. 934. Equity. Rule 8.

THOMAS J. HALIDAY ET AL. }  
James S. Edwards, trustee herein, having reported a sale of original lot sixteen (16), in the square one hundred and four (104) in Washington City, in the District of Columbia, to John E. Francis, for \$1,540.40:

It is, this 30th day of July, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 4th day of September, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 31-3 R. J. MEIGS, Clerk.

#### THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henrietta Dorsey Handy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

LOUISA WILSON.  
E. D. F. BRADY, Solicitor. 30-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. July 28, 1883

In the case of William A. Gordon, Administrator et al. of Ella S. Dodge, deceased, the Administrator et al. aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August A. D. 1883, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator et al. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 30-3 H. J. RAMSDALL, Register of Wills.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

SARAH M. STARR, Executrix.  
HAGNER & MADDOX, Solicitors. 29-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence E. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.  
 29-3 CHARLES E. OREOY, Administrator.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.  
 CHARLES WALTER, Executor.  
 CHAS. A. WALTER, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Mt. Pleasant, So. Carolina, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of S. Pamela Mackey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of July, 1883.  
 E. W. M. MACKEY, Administrator.  
 CRITTENDEN & MACKEY, Solicitors. 28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

AUGUSTA McBLAIR ET AL.  
 Complainants  
 v.  
 THOS. E. WAGGAMAN ET AL.  
 Defendants.

No. 8658. Eq. Doc. 23.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Sarah Ann Newton, Catharine Ann Munson, Miles O. Munson, Margaret M. Summers, Simon L. Summers, Amelia A. Harris, Marcellus W. Harris, Ella L. Stapp, Butler B. Stapp and William D. W. Newton, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 30-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of James Egan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.  
 MARY ANNA EGAN, Administratrix.  
 WM. T. S. CURTIS, Solicitor. 28-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

JOHN HUNTER JARDELLA  
 v.  
 JOHN T. BULGER ET AL.

No. 8692. Eq. Doc.

On motion of the plaintiffs, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendants, John T. Bulger and Rev. W. T. Durham, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
 A true copy. Test: 30-3 R. J. Meigs, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Isabella Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hand, this 31st day of July, 1883.  
 FRANCES R. R. BROMWELL,  
 ISABELLA HAGNER.

30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martha A. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of July, 1883.  
 JOB BARNARD, Administrator.

30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Bennett Lee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.  
 REBECAH W. LEE, Administratrix.

A. O. RICHARDS, Solicitor. 30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of July, 1883.**

ELIZA A. OFFUTT  
 v.  
 GEORGE A. BOHRER AND OTHERS.

No. 8634. Eq. Doc., 23

On motion of the plaintiff, by Mr. R. P. Jackson, her solicitor, it is ordered that the defendants, John M. P. Olitz, Mary Olitz, Julius S. Bohrer, Lucinda Bohrer, B. Rush Bohrer and William H. Bohrer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 30-3 R. J. Meigs, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of July, 1883.**

RUFUS A. MORRISON  
 v.  
 CATHARINE BOYLAND AND THE  
 UNKNOWN HEIRS AT LAW OF  
 MICHAEL DOYLE.

No. 8660. Eq. Doc. 23.

On motion of the plaintiff, by Mr. James H. Smith, his solicitor, it is ordered that the defendants, the unknown heirs at law of Michael Doyle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 30-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, July 27, 1883.**

In the matter of the Will and Codicil of Ida K. Davis, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Robert G. Dyrenforth.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: 30-3 H. J. RAMSDALL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 HENRY E. DAVIS, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS. W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

O. F. ROWE, Solicitor. 29-3 ALBERT HARPER.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

29-3 DANIEL O'O. O'ALLAGHAN, Administrator, 436 7th street, n. w.

**IN THE SUPREME COURT OF THE DISTRICT OF**

Columbia, the 19th day of July, 1883.

WILLIAM W. HUDSON

CATHERINE HUDSON.

No. 8636. Eq. Dock 23.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, Catherine Hudson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice  
True copy. 29-3 E. J. MILES, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**

Columbia, the 28th day of June, 1883.

JOHN P. FRANKLIN, Executor, &c.

VIRGINIA YOUNG ET AL.

No. 5618. Equity.

On motion of the plaintiffs, by Messrs. Bradley & Duvall, his solicitors, it is ordered that the defendant, Virginia Young, cause her appearance to be entered hereon on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 29-3 E. J. MILES, Clerk

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix.  
W. W. BOARMAN, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix.  
LEON TORRINER, Solicitor. 29-3

**IN THE SUPREME COURT OF THE DISTRICT OF**

Columbia.

JOHN HOCKMEYER ET AL.

No. 8,623. Eq. Doc. 23.

LEOPOLD NEUMEYER ET AL.

On motion of the plaintiff, by their solicitor, Messrs. Warren C. Stone and Fred. W. Jones, it is ordered that the defendant, James Henry Neumeyer, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: E. J. MILES, Clerk.  
WARREN C. STONE and FRED. W. JONES, Solicitors for Complainants. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Susan S. March St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a.  
ROBERT CHRISTY, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Jane E. W. Kelly, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a.  
JAMES H. SMITH, Solicitor. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB,  
CHAS. J. LUSK,  
Administrators. 29-3

## Legal Notice.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

CHARLES SCHROTH ET AL. }

AMELIA MILLER. }

No. 8311. Eq. Doc 22.

Judson T. Cull and John A. Clarke, trustees herein, having reported sales of parts of lots 13 and 14, in square No. 642, (the same being more fully described in said report), to Nicholas Niter and George Juenemann, for \$485 and \$200 respectively:

It is, this 19th day of July, 1883, ordered, that said sales be confirmed unless cause to the contrary be shown on or before the 9th day of August, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 29-3 R. J. MEIGS, Clerk

## IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8566, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 24th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$600 to Robert E. Frey, as Treasurer of 18th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

26-6 By M. A. CLANCY, Asst. Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber of Baltimore, Md., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Ann Randall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of July, 1883.

THOMAS I. HALL,  
119 Welcome Alley, Baltimore,

DANIEL O'U. CALLAGHAN }  
and } Solicitors.  
W. J. WATERMAN, }

28-3

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of Chelsea, Massachusetts, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hattie V. Bennett, late of Chelsea, Massachusetts, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

PHILO H. BENNETT, Executor.  
JAMES G. PAYNE, Proctor. 28-8

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily Johnson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

JNO. H. WHITE, Executor.  
WORTHINGTON & HEALD, Solicitors. 28-8

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Davidson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

WM. H. WEST, Administrator.  
E. B. HAY, Solicitor. 28-8

## IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, this 7th day of July, A. D. 1883.

CHARLES J. KINSOLVING ET AL. } No. 8566. Equity.

ROBERT M. JOHNSON ET AL.

On motion of the complainants, by Messrs. Hanna & Johnston, their solicitors, it is, this seventh day of July, A. D. 1883, ordered, that the defendant Thomas Jefferson Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published for three successive weeks in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 28-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business, July 13, 1883.

In the matter of the Will of Robert R. Pywell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Edwin F. Pywell, one of the executors.

All persons interested are hereby notified to appear in this court on Friday, the 3d day of August next, at 11 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. D. WRIGHT, Solicitor. 28-8

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Sands, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1883.

F. P. B. SANDS, Executor. 28-8

# Washington Law Reporter

WASHINGTON - - - - - August 11, 1888.

GEORGE B. CORKHILL - - - EDITOR

## Recent Cases in Torts.

In *Munster v. Lamb*, recently decided in the English Court by Matthew and Smith, JJ., the rule was applied that defamatory expressions used by a solicitor in the course of his duty as an advocate are privileged.

A solicitor, in opposing a criminal charge made by the plaintiff for administering to his servants narcotic drugs in order to facilitate the commission of a burglary in plaintiff's house, sought to account for the supposed presence of some narcotic in the house by suggesting that it might have been brought into the house by the plaintiff himself with the intention of using it for some immoral and criminal purpose; and these words were the real ground of action.

The decision of the lower court sustaining the claim of privilege has been confirmed by the Court of Appeal, who hold (in a decision not yet reported) that no action lies against a counsel or advocate for words spoken with reference to and in the course of a judicial inquiry in which he is engaged as counsel or advocate, even if such words are spoken maliciously and without reasonable and probable cause, and are irrelevant to any issue or question forming the subject of inquiry (*Munster v. Lamb*, Ct. of App., Brett, M. R., and Fry, L. J., July 5).

The right of an attorney or solicitor to use his lien to the embarrassment of third persons was limited by a decision in the English Chancery in *Re Boughton*; *Boughton v. Boughton* (48 Law Times R., N. S., 415) where it was held that a solicitor who has formerly acted for all parties in an administration action, but has been discharged, cannot use his lien so as to embarrass the proceedings by keeping papers belonging to the estate under administration, in order to obtain payment of his bill of costs.

A case of some interest in actions where

exemplary damages may be recovered, particularly actions against corporations or against publishers and the like, is that of *Eviston v. Cramer* (15 Chicago Legal News, 352).

This action was against the publisher of a libel. The court say: "At the request of the plaintiff the court charged that if the jury found that the article was written and published maliciously by the witness Bleyer, then the defendants were responsible in damages for such malice, even though they were ignorant of the article until after it was published, and had no personal malice themselves against the plaintiff. This charge obviously made the defendants liable for the wilful and malicious act of their agent, the writer, Bleyer, though they were entirely ignorant of the article until it was published, and had themselves no personal malice against the plaintiff. The actual malice of the agent was imputed to the principal, who was held responsible for the malevolent act to the same extent as though they had themselves written and published the article. Punitive damages might be given against them under this rule, however innocent they might be of any bad motive or intent. Such is not the law in this State, whatever may be the rule elsewhere.

In *Craker v. C. & N. W. Ry.*, (36 Wis., 658, 675), the learned Chief Justice, in considering this question, says: "It is said in *Railroad Co. v. Finney* that the plaintiff in such a case is not entitled to exemplary damages against the principal for the malicious act of the agent without proof that the principal expressly authorized or confirmed it. Without now discussing what would or what would not be competent or sufficient evidence of such authority or confirmation, we may say that we have, on very mature consideration, concluded that the rule in *Railroad Co. v. Finney*, is the better and safer rule. We are aware that there is authority—and, perhaps the greater weight of authority—for exemplary damages in such cases without privity of the principal to the malice of the agent, and that reasons of public policy are strongly urged in support of such a rule (*Goddard v. Railroad Co.*, 57 Me., 202; *Sanford v. Railroad Co.*,



23 N. Y., 343; Railroad Co. v. Rogers, 38 Ind., 116, and other cases. But we adhere to what is said on that point in Railroad Co. v. Finney. We think that in justice there ought to be a difference in the rule of damages against principals for torts actually committed by agents in cases where the principal is, and in cases where the principal is not, a party to the malice of the agent. In the former class of cases the damages go upon the malice of the principal—malice common to principal and agent. In the latter class of cases the recovery is for the act of the principal through the agent—in malice of the agent not shared by the principal; the principal being responsible for the act but not the motive of the agent."

This rather lengthy quotation clearly states the rule upon this question adverse to the view held by the learned circuit court. And it must be deemed the settled law of this State that the principle is not responsible in exemplary damages for the actual malice of the agent, unless he has participated in or ratified and confirmed the malicious act of the agent. Of course, if the principal authorizes or directs the wrongful act, then his own bad intent will be imputable to it. It is said the answer states that Bleyer was directed by the defendants to inquire into the matter of the charges and investigation of the plaintiff's conduct, write out the result of his examination and publish it, therefore they ought to be held responsible to the full extent he would be. We cannot adopt that view. We cannot presume from what is stated in the answer that the defendants authorized or expected their reporter would write and publish a false and malicious libel upon the plaintiff. The reporter's employment ought not to be held as authorizing him to do any such thing.

Cassoday, J., added: Where they warrant the assessment of punitive damages, the better practice would seem to be to require the jury to find the amount of compensatory damages, and then a separate question requiring them to find specifically the amount of punitive damages, as in *Bass v. Railway* (42 Wis., 657). By so doing, the rules applicable to each class of damages can be given in charge to the jury in a way less likely to confuse and mislead them. Some portions of the charge seem to be inconsistent with others; as, for instance, in one place the jury were told, in effect, that the article was libelous per se, and in another, that it was for the jury to judge whether it would bear that construction or not. But such of these as were more favorable to the defendants than to the plaintiff, could work no injury to the former.  
—*The Daily (N. Y.) Register.*

## Supreme Court District of Columbia

### GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

WASHINGTON MARKET CO. vs. WARTHEN BROS.

AT LAW. No. 19,431.

{ Decided May 14, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and COX sitting.

Pending cross-appeals from a decree settling equities between a market company and certain of its tenants, lessees of stalls, receivers were appointed to collect the rents. There was no provision in the decree appointing the receivers authorizing them to enforce payment of the rents nor directing them to take possession and lease the stall to another in case any tenant should abandon it or otherwise violate the terms of his lease. The tenants failed to prosecute their appeal and one of them, after failing for some time to pay the receivers any rent, abandoned his stall. Whereupon the market company took possession and leased it to another.

*Held*, that the authority of the receivers extended only to receiving the rents from these particular tenants as they chose to pay, and that on non-payment of the rent, or other violation by the tenant of the terms of his lease, the landlord was entitled to re-enter.

THE CASE is stated in the opinion.

BIRNEY & BIRNEY for plaintiffs.

ELLIOT & ROBINSON for defendants.

Mr. Justice COX delivered the opinion of the court.

This is an action brought by the Washington Market Co. against Warthen Brothers, to recover \$408.54 for the rent of stalls occupied by the defendants. In order to explain the defence made in this case, it will be necessary to refer to the old case of *Hoffman* and others, instituted in this court, against the same company, growing out of the interpretation put by the butchers upon the terms of their respective leases from that company. The company's charter authorized it to put up these stalls at public auction for one or more years, to the highest bidder, subject to the payment of an annual rent, &c.; and it provided that the person who offered the highest price, at or beyond the minimum, for any stand, should be entitled to the occupation thereof, and should be considered as having the good-will and possession thereof "so long as he chooses to occupy the same for his own business and pay the rents therefor." In pursuance of this, the company did offer the stalls at auction for a term of two years, at a certain fixed rent, and of course the party who offered the highest premium or bonus for a stall, in addition to the rent, received it and took his lease, subject to the

terms prescribed as to rent, occupancy, &c. When the first two years expired, the company claimed the right to re-advertise the stalls, and the butchers contested that claim, contending that, having once acquired possession, they had a right to occupy the stalls as long as they pleased without a re-purchase, provided they paid the rent and complied with the other conditions of the leases; and Hoffman and others filed a bill to enjoin the re-sale of the stalls. The company, on the other hand, filed a cross-bill, in which they claimed that the market butchers should be compelled to pay them the rents reserved in these leases. This court decreed, in the first place, that the company should be enjoined from re-selling the stalls; and in the next place, that the butchers should be required to pay the rents. The market company appealed to the Supreme Court of the United States, and that court reversed the decree of this court and held that there was no perpetual privilege, but only a right to occupy the stalls for a term of two years on certain conditions, and therefore that the company had a right to re-advertise the stalls. Pending the suit, there was an amendment made to the bill, by which others than the original parties were made parties to the suit, and among them the Warthen Brothers; and when the final decree of this court was made, it was provided in the decree, first, that the company be restrained from offering for sale these stalls, stands, &c., upon any claim or pretense that the several rights and interests of the occupants were for a term of two years only; and, next, that the butchers are, each for himself, severally bound to pay the amounts agreed as rents for the said stalls; and then the decree proceeds: "And whereas the said market company has prayed an appeal to the General Term from such portion of this decree as awards a perpetual injunction against the sale of the said stalls and stands as aforesaid; and the said Hoffman and his co-complainants have prayed an appeal from such portion of this decree as decides that they are liable for rent; and the said several parties have agreed in open court, by their respective solicitors, that, pending such appeals, and any further appeals that may hereafter be taken from the said General Term to the Supreme Court of the United States, receivers should be appointed to collect the rents so decreed to be paid, it is further ordered, adjudged and decreed, that William E. Chandler and Robert K. Elliot be, and they are hereby appointed receivers, to collect such rents from said several defendants to said cross-bill, and the same safely to keep and invest under orders of the court," &c.

Although the butchers did, as recited in the decree, appeal, they did not in fact prosecute the appeal; and inasmuch as the whole object of appointing the receivers was to prevent the rents going into the hands of the market company, upon the ground that they were not entitled to them. There was hardly any necessity for the continuance of the receivers in office. Nevertheless, these two receivers were appointed, and did continue in office and did collect the rents. Then the market company claimed that these defendants, Warthen Bros., failed not only to pay the rents, but also to occupy the stalls, according to the conditions of the leases; and thereupon the company say that, after warning to the defendants, they took quiet possession of the stalls. Subsequently, an order was obtained from the court, at the instance of the receivers themselves, that they be relieved from the collection of the rents of any "stalls that have been or may be vacated;" and the company, claiming that these stalls had been so vacated, and that the receivers were under no obligation, and had not even the right to collect the rents for stalls vacated, instituted this suit to recover the rents.

The defence is, that the company wrongfully took possession of one of these stalls, and that the damage suffered by the defendants by this proceeding is greater in amount than the rents which the defendants owe, and therefore they seek to recoup these damages against the claim of the plaintiff for rents.

There were five bills of exception presented by the defendants, but the fifth is the only one which is insisted upon.

By that exception it appears that the Court said to the jury:

"There is a question as to whether the plaintiff can maintain this action, and whether it had a right to re-enter for non-payment of rent, but I shall hold, for the purposes of this case, as matter of law, that the action can be maintained, and that the plaintiff had the right of any other landlord to re-enter for the non-payment of rent."

In other words the court held that notwithstanding the appointment of these receivers, if the stalls of these butchers were forfeited for non-payment of rent, or for non-compliance with any other condition of the lease, the market company had a right to re-enter. The correctness of this instruction turns upon the question whether the appointment of these receivers put it out of the power of the Market Company to take possession of these stalls under any circumstances. It does not strike us that that was the effect of the decree appointing these receivers. They were

not put in possession of the property at all. In case any one of these tenants chose to surrender his lease, it was not provided that the receivers should take possession of the stall and release it to other parties. It was for the market company to do that. The appointment of the receivers referred only to the relations between these particular tenants and the market company. So, if a stall was vacated or abandoned, or not used according to the requirements of the lease, by any of the tenants, the market company had a right to resume possession of it as forfeited under the lease; and it does not appear to us that that duty was devolved upon the receivers, or that they had the right under the circumstances. There was no provision in the appointment of the receivers directing them to take possession and enforce any of the conditions of the lease; and the consequence would have been that no remedy would have existed at all in case of the abandonment of a stall or the non-payment of the rent, unless the company were supposed to remain in possession, with their remedies for a breach of the conditions of the lease. It does not seem to us, therefore, that the object or effect of this order was to pre-empt or suspend the remedies of the market company against defaulting occupants of these stalls. The whole object was to enable the receivers to collect the rents as the parties chose to pay them. It was not until some time afterwards that they were clothed with any power to enforce the collection of rents, and not until after these stalls had become unoccupied. Under the orders then existing, the remedy for a default rested with the company alone; and this seems to have been the understanding of the parties themselves; because if the theory contended for in this case, that the appointment of these receivers suspended all power of the market company to take possession, be correct, then this wrong of which complaint is made, could have been redressed in the most summary manner, on application to the court. Yet, they never undertook to seek any relief of that sort, and, in fact, never made a question as to the wrongfulness of this entry by the company until one or two years later, and then by way of recoupment in this case.

We hold, therefore, that on the whole, the ruling of the court below as to the power of the market company to deal with these stalls as any other landlord deals with his property, untrammelled by the appointment of these receivers, is correct.

The judgment is therefore affirmed.

THERE is a man in California named Ink. They have to be careful how they "sling" him.

#### The Chinese Laundry Case.

HOP SING v. JOS. C. PEAN.

The following is the decision of William Helmick, Esq., justice of the peace, in the Chinese landlord and tenant case, decided August 4, 1883:

This is an action brought by Hop Sing the plaintiff v. Joseph C. Pean, the defendant, under our landlord and tenant act, to recover possession of house No. 344 on Pennsylvania avenue n. w., which the defendant claims to hold under a lease with B. H. Warner, of date June 4th, 1883.

The plaintiff claims that on June 11th he purchased from the defendant the partition and fixtures, with right of the possession of the premises in which they are contained, for which he paid the defendant the sum of \$55; that the defendant was to give him the key to the premises on that evening, which he did not do, and has not to this date; but that on the contrary, the defendant has opened the house and premises as a laundry, which adjoins the laundry of the plaintiff. The plaintiff presented what purported to be a written contract, in the Chinese language, said to be signed by both the plaintiff and defendant, and witnessed by two other Chinamen. The plaintiff and a number of his own countrymen were sworn as witnesses, one of whom talks our language in a broken way, who was also sworn as an interpreter and translator. The plaintiff and four others testified that the contract was drawn by Hop Lee, and they saw the plaintiff and defendant sign it in the business place of the plaintiff, No. 346 Pennsylvania avenue, and also that they saw the plaintiff pay to the defendant \$55; one of them said there were 2 \$10, 3 \$5, and 20 \$1 bills. The contract was shown the translator, and he made it read: "Washington, D. C., June 11th. Place on Pennsylvania avenue, 344, sell to Hop Sing, and partition, business and everything for \$55. Joe. Pean never rent place do any business again, if he do rent again promise to Hop Sing \$550, he swears." But the translator seemed to be unable to go through with it, and stopped; so that his translation was not satisfactory. I have had another translation of the contract made by Mr. Chew, secretary to the Chinese Legation, and said to be verified by the Chinese minister, which is rendered to read as follows: "Joe. Pean residing in Washington, D. C., being hard up, is willing to sell everything in the premises of 344 Pennsylvania avenue; he has invited all his kinsmen to purchase, but none is willing to do so. Afterwards he made this matter known to one named Mui Tsung

Long, who acting as mediator, brought him to Hop Sing of the Hop Sing shop. Hop Sing made the purchase; it is agreed that the sum fixed for buying partition and other utensils in the said house is \$55. It is further agreed that Joe. Pean cannot in future carry on his business in the said premises, and should he (Joe. Pean) break his promise he would be willing to forfeit a sum of \$550. To prevent a rental of premises this is drawn up and signed, and given to Hop Sing as a proof." Signed by the parties and two witnesses. After the translation of the contract the plaintiff rested his case. The defendant is sworn, and testified that he had never in his life spoken to Hop Sing; that he never was in Hop Sing's place of business; that he never signed the agreement, or saw it until the day of trial, and that Hop Sing had not paid him one dollar of money. The defense rested. The plaintiff's attorney then called to the stand a colored man, Philip Arthur, who has been for years the janitor of Galilean Hall, whose testimony corroborated the testimony of the plaintiff and his witnesses in this: He says he was present, and saw the defendant Pean in plaintiff's place of business (Hop Sing), June 11th and that the witnesses (pointing them out) were there also, and that he saw Hop Sing have a roll of money, and that he had seen defendant there at other times. Taking all the evidence as presented the preponderance being with the plaintiff, I am compelled to concede that the contract was signed by the parties, and that the money was paid. The plaintiff's attorneys, in their arguments, insisted that they had made out a clear case and were entitled to a judgment for possession of the premises. The defendant's attorneys raised several legal points, and insisted that they, or either of them, were sufficient to defeat the case. With one exception I do not consider them of sufficient importance to give them much consideration. The question in the case is this: Has the plaintiff shown, either by the contract or the testimony, that he is entitled to recover possession of the premises under the landlord and tenant act of this District? In order to enable him to recover possession he must show how, and by what authority he claims it. Has he done so? Does he show either in fact, or by legal implication, that the relation of landlord and tenant ever existed between the parties? Take either of the translations of the contract, and you do not find a word about the lease or the possession of the premises; it only speaks of the fixtures, &c. But even suppose for the sake of argument we concede that the con-

tract of sale was intended to carry with it not only the defendant's fixtures, &c., but the lease and the right of possession of the premises also; what else is in the contract which the defendant has signed? It is this, if the defendant refuses to comply with contract, and should go into business again in the premises, he will forfeit and pay the plaintiff \$550. In such case has the defendant not reserved the right to either give possession or forfeit the sum of \$550, and did not the plaintiff consent to put himself in that condition? It looks so to me. Taking the whole case as presented before me, I am unable to see how I can give the plaintiff a judgment for the possession of the premises. If the contract was genuine, and was really signed by the parties, it seems to me that the plaintiff's remedy is a different action—for damages. Judgment will therefore be rendered for the defendant for his costs.

MILLER AND LEWIS for plaintiff.

THOMAS AND MANCOSOS for defendant.

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Supreme Court of Wisconsin.

Opinion Filed May 21, 1883.

BRIFFITT vs. THE STATE.

*Beer: Judicial Notice that it is Intoxicating.*—When a witness in court uses the word "beer," the court will take judicial notice that it means a malt and intoxicating drink. Such meaning will be a presumption of fact; and in the meaning of the word itself there will be prima facie proof that it is malt or intoxicating liquor that is meant.

The manner or emphasis, or force of expression of a judge that cannot be reasonably interpreted to express a wrong opinion as to the law or facts, or to express an opinion of a fact which should be left wholly to the jury, cannot be assigned as error.

A judgment or sentence for selling liquor without license, that in default of payment of the fine and costs the defendant is to stand committed, not to exceed sixty days, is according to § 463 Revised Statutes, and valid.—*Legal Adviser.*

Error to Circuit Court of Columbia County.

ORTON, J.—The complaint before the justice was that the defendant had sold "intoxicating liquors" without first having obtained a license therefor. The case was appealed to, and finally tried in, the circuit court. The only question really presented by the exceptions, either to the evidence or to the charge of the court to the jury, is whether proof that the defendant had sold *beer* was sufficient proof that he had sold malt or *intoxicating* liquor. In ruling upon a question of evidence, the court said: "I suppose everybody knows what is meant by beer." When the

question was asked whether malt is used in ordinary beer, the court said: "I do not think it is necessary. I think a man must be almost a driveling idiot who does not know what beer is. I do not think it necessary to prove what it is." The charge of the court on the same subject was substantially of the same import. It was proved that the defendant had sold "beer." There was some proof tending to show that the beer sold had an exhilarating effect, and that it was such beer as was brewed in large breweries of the State. But such evidence scarcely rendered the above ruling immaterial, if it was necessary to prove that the beer sold was either *malt* or intoxicating liquor, because it was clearly insufficient for that purpose. The statute (§ 9, c. 332, Laws 1882) makes the proof of the sale of any *malt* liquor, proof of the sale of intoxicating liquor. The case, so far as the evidence is concerned, is outside of this statute; for it was neither charged nor proved that malt liquor was sold by name, and it may as well be assumed, and could have been as easily proved, that it was intoxicating liquor, as malt liquor. The question, therefore, remains, without the aid of the statute, whether it is implied in the word "beer" that it was either malt or intoxicating. The statute of New York was the selling without licenses of any "strong or spirituous liquors," or any wines, etc.

In *Nevin v. Ladue*, 3 Denio, 437, the question was whether ale, porter, and strong beer were included in the term "strong liquors," and it was held, without proof, that they were so included. The learned chancellor wrote an opinion giving one of the most learned essays upon the composition and use of malt liquors ever written. The subject is treated scientifically, philosophically, historically and geographically, and the opinion is well worthy of reference and reading; but it is not necessary to reproduce it here further than to say that it is shown that malt liquor, as ale or beer, was made and used as a beverage before the time of Herodotus, and has continued to be made and used all along down the ages, and in various countries, until the present time. At the present time we all know that this malt liquor, under the generic name of "beer," is made and used in most of European countries, and in our own, and is a common beverage. As long as laws for licensing the sale of intoxicating liquors have existed, brandy, whisky, gin, rum, and other alcoholic liquids have been held to be intoxicating liquors *per se*; and why? Simply because it is within the common knowledge and ordinary understanding that they are intoxicating

liquors. By this rule of common knowledge courts take judicial notice that certain things are *verities*, without proof; as, in *Chambers v. George*, 5 Lit., 335, the circulating medium in popular acceptance was held to mean "currency of the State," and in *Lampton v. Haggard*, 3 Mon., 149, the circulating medium was held to mean "Kentucky currency," and in *Jones v. Overstreet*, 4 Mon., 547, the word "money" was held to mean paper currency. If a witness on the stand were asked whether whisky is intoxicating, he would be apt to smile as at a joke, and an intelligent witness, when asked the same question in relation to beer, might smile with equal reason. Words in contracts and laws are to be understood in their plain, ordinary and popular sense, unless they are technical, local, or provincial, or their meaning is modified by the usage of trade. 1 Greenl. Ev., § 278.

When the general or primary meaning of a word is once established by such common usage and general acceptance, we do not require evidence of its meaning by the testimony of witnesses, but look for its definition in the dictionary. Whisky, according to Webster, is "a spirit distilled from grain;" and beer, according to the same authority, is "a fermented liquor made from any malted grain, with hops and other bitter flavoring matter." It is true that, to a limited extent, there are other kinds of beer, or of liquor called beer, such as small beer, spruce beer, ginger beer, etc., but such definitions are placed as remote and special, and not primary or general. So it may be said of other substances having a common name and meaning such as milk, or tea. Milk, according to Webster, is "a white fluid secreted by female mammals for the nourishment of their young." There are other kinds of milk, however, such as "the white juice of plants," which is the remote definition; or milk in the cocoanut, or that in the milky-way. Tea is defined to be "leaves of a shrub or small tree of the genus *Thea* or *Camellia*. The shrub is a native of China and Japan." There are other kinds of tea, such as sage tea and camomile tea, etc. The latter are the restricted uses of the word. When asked to take a drink of milk, or a cup of tea, it would not be necessary to prove what it meant. Why is it more necessary to prove what is meant by a glass or drink of beer? When beer is called for at the bar, in a saloon or hotel, the bartender would know at once, from the common use of the word, that strong beer—a spirituous or intoxicating beer—was wanted; and if any other kind was wanted, the word would be qualified, and the particular kind would be

named, as root beer or small beer, etc. When, therefore, the word "beer" is used in court by a witness, the court will take judicial notice that it means a malt and an intoxicating liquor, or such meaning will be a presumption of fact, and in the meaning of the word itself there will be *prima facie* proof that it is malt or intoxicating liquor that is meant.

When the witnesses in this case testified that the defendant sold to them beer, the prosecution had sufficiently proved that he had sold to them a malt and intoxicating liquor, for both qualities are implied in the word "beer." This, as a logical conclusion and principle of law, would seem to be well established by common reason, and we think it would be difficult to find a single good reason against it.

As to decisions and authorities upon the question, it must be confessed it would seem that those which require proof that beer, or the liquor sold by that name, is intoxicating, have at least the weight of numbers. But there are many authorities, of the very highest judicial source, and based, as we think, on far the better reason, which hold the doctrine we have indicated. These we feel bound to follow.

In *Nevin v. Ladue*, 3 Denio, 43, the question was one of law, whether "ale" was a "strong and spirituous liquor" within the statute, and it was held that it was from its long use and well known qualities, and from common knowledge, and definition in Webster.

In *People v. Wheelock*, 3 Parker Crim. R., 9, it is said in the opinion: "The word 'beer,' in its ordinary sense, denotes a beverage which is intoxicating, and is within the fair meaning of the words 'strong or spirituous' as used in the statutes, and it was held that it was incumbent upon the defendant to show that the word was used in a restricted or qualified sense, such as to denote *root beer*, *molasses beer*," etc., and this is unquestionably the correct rule in such cases.

In *Board of Commissioners of Excise, etc., v. Taylor*, 21 N. Y., 173, it was held that "strong beer" was within the statute.

In *Rau v. People*, 63 N. Y., 277, it is held that "strong beer" was within the statute.

In *State v. Goyette*, 11 R. I., 592, it is held that the court should take judicial cognizance, and without evidence, that "lager beer" is a malt liquor, and it is said in the opinion by Chief Justice Durfee: "Lager beer is, and has been for many years, a familiar beverage in this country. Its constituents are enumerated not only in books of science, but in encyclopædias. It is a malt liquor of the lighter sort, and differs from ordinary beers

and ales, not so much in its ingredients as in its processes of fermentation. The government might almost as well be required to prove that gin, or whisky, or brandy, is a strong liquor, as to prove that lager beer is a malt liquor."

In Massachusetts, "strong beer and lager beer" are to be deemed to be intoxicating by statute, and that is conclusive. *Com. v. Anthes*, 12 Gray., 29.

Many authorities to the same effect are referred to in the above cases, and many more might be cited. It is useless to cite or comment upon that large class of authorities which hold the other way, for we disapprove of them and follow these, founded, as we think, in the better reason. The court is indebted for above citations to the able brief of the learned counsel of the State; on the other hand, the learned counsel of the defendant is entitled to great credit for the ability and industry shown in the brief of his side of the case. The learned counsel of the defendant complains of the peculiar manner and language of the court in ruling upon this question, and cites authorities that even the improper manner of a judge, which influences or prejudices the minds of the jury, may be assigned for error. But those authorities are only to the effect that a manner or emphasis or form of expression which may be reasonably interpreted to express a wrong opinion as to the law or facts, or to express an opinion of a fact which should be left wholly to the jury, may be assigned as error, the same as words of the same effect.

The rulings of the learned judge in this case as to this question were clearly correct, and if his peculiar manner gave them force by emphasis, that was not only proper but commendable. It is not a fault but a high merit in a judge to make his rulings clear and positive, so as not to be misunderstood, and the only question for this court is, whether such rulings were correct as matters of law. His manners we have nothing to do with. That is a matter entirely personal, except expressing error. We think the rulings of the circuit court on this question were clearly correct. The learned counsel of the defendant claims that the judgment or sentence is void, because, in default of payment of the fine and costs, the defendant is to stand committed not to exceed 60 days, and cites chapter 332, Laws 1882, which provides that, in lieu of a fine, the defendant may be punished by imprisonment not to exceed 60 days, nor less than 20. The sentence is strictly according to § 4633 Rev. Stat.

The judgment of the circuit court is affirmed.

#### Inequality of Sentences.

Sergeant Ballentine, in his late book on his experiences as a barrister, touches upon the point of the inequality of sentences which is brought about by the large discretion which is allowed to judges in fixing the sentences of prisoners convicted of crimes, and concludes that, although it would be impossible to conform the code to meet all the requirements of our complicated state of existence, yet he thinks "it would look better in the eyes of the public, and be much more satisfactory for the judge, if a certain sentence always followed the same verdict, and mitigating circumstances were left for the executive to deal with."

The fact that our law leaves the extent of a sentence, in almost every case, more or less to the discretion of the judge, confining it only within certain limits, is quite sufficient to make certain another fact, that the length of time during which the person receiving sentences shall suffer punishment will depend very much upon the constitution, temper and passion of the judge passing sentence. A bad digestion has no doubt caused many a man to spend years in the penitentiary, while a sunny disposition has allowed many an infamous rascal to escape well-deserved punishment.

Judicial discretion is no doubt a very dangerous thing; it has been said to be the law of tyrants. If certain defined limits are put to it, it ceases to be discretion; but it may change each moment and be discretion still.

There is perhaps no position into which a judge is brought which is more trying than that of passing sentence for crime, and the fact that the extent of the sentence is left to his judgment is what gives the great sense of responsibility. He stands between the fear of doing injustice to the prisoner and of not fulfilling his duty to the public. He must look to all the circumstances surrounding the case. The age and temptations of the prisoner, his appearance and actions, also the elements of malice attending the crime, are all taken into account in measuring his degree of culpability. The inquiry as to circumstances is the difficult task. A great rogue may have many active and admiring friends and relations. They pour pleas for mercy into the ear of the judge. The prisoner himself may have a pleasing and persuasive manner, and may invoke mercy in his own behalf. The most powerful outburst of native eloquence that we ever remember of hearing, was from an ignorant negro convicted of shooting with

intent to kill. The judge asked him if he had anything to say why sentence should not be passed upon him. He replied in a speech of five minutes length, and when he closed the judge made the remark that if he had addressed the jury in the same manner he would not now have the unpleasant task of passing sentence upon him. He received the lowest sentence allowed by law. The speech had deducted not less than three or four years from his sentence. A poor burglar followed him before the bar. He had seen the effect of the negro's speech and supposed it a sure antidote for long sentences. He attempted the same thing, but his tongue clove to the roof of his mouth. He could do nothing but malign the witnesses in the case. The judge soon stopped him and gave him the full extent of the law. He added to his sentence, by his talk, as much as the negro had deducted from his. And so it goes. The circumstances of the moment, the importunities of friends, the arguments of counsel, the looks and actions of the prisoner all have their weight and influence in finally fixing the extent of the punishment when it is left to the discretion of the judge.

But if a burglary was made a burglary, a larceny a larceny, a robbery a robbery, each crime having its punishment fixed, circumstances could have no influence. The responsibility of the court would be relieved, and probably more exact justice would in many cases be meted out. But would not the gain be more than counterbalanced by the injustice of not allowing mitigating circumstances to have their influence in limiting the degree of culpability? Everyone recognizes different elements of crime in the commission of the same criminal act. If an old and hardened criminal persuades an inexperienced youth to join him in an act that is contrary to law, we immediately attach greater responsibility to the former than to the latter. To allow the executive to mitigate sentences would be but to put the discretionary power one degree farther from the full development of the facts. The judge trying the case has all the circumstances more fully before him than would probably be possible to get them before anyone else at any subsequent period. His discretion though *per se* dangerous would in the long run certainly be the safer of the two. —*Cincinnati Law Bulletin*.

AFTER the clergyman had united a happy pair not long ago, an awful silence ensued, which was broken by an impatient youth exclaiming, "Don't be so unspeakable happy."



## Chinese Libel Suit

Wong Chin Foo is the editor of the Chinese-American, a newspaper published in this city. In that journal he denounced his fellow-countryman Chan Pond Tipp as a thief and an assassin, whereupon Tipp sued him in the supreme court for libel, and procured his arrest. Foo gave \$500 ball, and yesterday his counsel, Mr. Rosebalt, moved before Judge Potter, at supreme court chambers to have the order of arrest vacated. Mr. Rosebalt said that there were no such persons as Tuck Hop and Ah Wong, the sureties named in the bond given by Tipp to procure the order of arrest. Tuck Hop, he said, was stated to be resident of No. 17 Mott street, but that house was occupied by persons named Lee. Part of the house was used as a grocery, over the entrance of which were the words Tuck Hop, which meant in English "united virtues," but which were not the name of a man. As for the name Ah Wong, the alleged bearer of which was not given a residence on the bond, Mr. Rosebalt said that it was not specific enough to indicate anybody, because Wong meant "blacksmith," and Ah was a prefix equivalent to "Mr." All these things indicating Tuck Hop and Ah Wong to be myths, Mr. Rosebalt thought that the order of arrest should be vacated. The attorney for Mr. Tipp read affidavits showing that there is such a person as Tuck Hop at No. 17 Mott street, and that he was very well known among his countrymen; and also that Mr. Ah Wong is not a creature of the imagination, but a veritable person living in Atlantic avenue, Brooklyn, and having sufficient money to justify him in becoming bondsman for Tipp. Judge Potter reserved his decision.—*N. Y. Daily Register.*

LORD COLERIDGE's speech at the Irving Banquet was not a success. He is not an effective after-dinner orator, and then he needs people to explain their jokes to him. Mr. Toole, for example, was frightfully depressed on discovering this fact—for which neither he nor the company were quite prepared. The "Mammoth Comique" of the old Folly Theatre made an allusion to the Tichborne trial, and playfully suggested that Lord Coleridge not only invited him to a seat allotted to a member of the Bar, when the case was going on, but to their "consultation" together. "How far," said Mr. Toole, in accents full of serio-comic earnestness, "in our consultation, I was able to assist him in his difficult task must ever remain a profound professional secret between us;" an announcement received, as might be expected, with peals of laughter. Everybody saw that "Johnny" was

simply giving "the Chief" a "cue" for a witty reply—and the dismay that seized on the company when Lord Coleridge took the great jester *au sérieux*, and proceeded with ponderous gravity to give an official and formal denial to the fact that he ever held professional consultation with Mr. Toole on the occasion referred to, was a spectacle never to be forgotten. Mr. Toole is said to have congratulated his friend Irving on having had better luck. "Suppose, Henry," said he on going home "the Chief had mistaken you for a Comedian."—*Pump Court.*

IN ANSWER to an inquirer as to which is the largest railroad company in this country, the *New York Journal of Commerce* gives the following interesting information:

The Union Pacific is the largest, 4,269 miles, capital \$65,322,155. The Pennsylvania operates 1,173 miles, capital \$85,462,300; New York Central, 993 miles, \$89,428,300 capital; Wabash, 3,348 miles, \$49,954,700 capital; the Missouri Pacific controls 5,535 miles, with a capital of \$30,000,000; Louisville & Nashville, 2,028 miles, capital \$25,000,000; Lake Shore, 1,277 miles capital \$50,000,000; Illinois Central, 1,892 miles, capital \$29,000,000; Chicago and Northwestern, 3,278 miles, capital \$57,836,499; Chicago and Rock Island, 1,381 miles, capital \$41,960,000; Chicago, Milwaukee & St. Paul, 4,353 miles, capital, \$34,305,744; Chicago, Burlington and Quincy, 3,136 miles, capital, \$69,814,191; Central Pacific, 2,995 miles, capital \$59,275,500; Baltimore and Ohio, 1,553 miles, capital \$19,795,556; Northern Pacific, 2,091 miles, capital \$90,409,132; Erie, 1,020 miles, capital \$85,975,100.

RISK OF EMPLOYMENT—The same degree of care required of a railroad company in providing and maintaining machinery for use by its employes must be observed in the appointment and retention of the employes themselves including telegraph operators. Ordinary care on the part of such company implies, as between it and its employes, not simply the degree of diligence which is customary among those entrusted with the management of railway property, but such as, having respect to the exigencies of the particular service, ought reasonably to be observed. It is such care as, in view of the consequences that may result from negligence on the part of employes, is fairly commensurate with the perils or dangers likely to be encountered.—[The Wabash, St. Louis & Pacific Railway Company v. McDaniels. United States Supreme Court, 1883.]



*Obligation payable at bank not discharged by deposit in bank for payment.*—Bonds issued by a municipal corporation were made payable at a bank named therein, and the corporation deposited money with the bank to pay the bonds. When the bonds became due, the bank holding the money deposited for payment was solvent. Before the bonds were presented for payment it became insolvent. *Held*, That the bank was in no sense the agent of the bondholder, and that the corporation was still liable on the bonds. [Adams v. Hackensack Improvement Commission. Alb. L. J., June 30, 1883.]

*Sale of liquor by club to members.*—The sale of liquor by a club to its members, either for use on its premises or off of them, is not a sale within the meaning of a statute prohibiting any person from selling by retail intoxicating liquor without a license. [Graff v. Evans. High Ct. of Justice, England. Am. L. Reg., Feb., 1883.]

*Licensee: when cannot sue in his own name.*—A mere license to make and use, without the right to grant to others to make and use the thing patented, though exclusive, will not authorize the licensee to bring suit in his own name for infringement, without joining the patentee. *Semble*, If the patentee refuses to join, a court of equity can give a remedy to the licensee. [Wilson v. Chickering. U. S. Cir. Ct., D. Mass. Fed. Rep., March 6, 1883.]

*Real estate held by firm: presumption that it continues real estate.*—Real estate held in the name of a firm, and bought with its funds, is not thereby converted into personalty; in order to effect such conversion as against strangers and creditors of the individual partners, it is necessary that the deed should expressly state that it is held as partnership property, or there must be actual notice to the party. [Kepler v. Erie Dime Saving & Loan Co. Sup. Ct. Pa. Week. N. C., April 12, 1883.]

*Undue influence: spiritualism.*—Where a testator embraced spiritualism as practiced by his beneficiary, who claimed to be a spirit medium, and the testator became possessed of it, and suffered it to dominate his life, and where his belief in spiritualism was artfully used by the beneficiary to alienate him from his only son and to get his property, *Held*, That a will made in such a mental condition and under such influence should be set aside. [Thompson v. Hawks. U. S. Cir. Ct., D. Ind. Fed. Rep., March 6, 1883.]

*Lodging house keeper: when not an inn keeper.*—A person who keeps a lodging house,

in which no provision is made by him for supplying lodgers with meals, is not an inn-keeper. The fact that there was a restaurant kept by another person in the basement of the house, between which and the upper part of the building there was a doorway to facilitate access from the lodging rooms to the restaurant, did not make the keeper of the lodging rooms an inn-keeper, and he had therefore no lien upon the baggage, furniture or effects of the person to whom he lent the rooms. [Cochrane v. Schryber, N. Y. City Common Pleas, Gen. Term. Daily Reg., July 20, 1883.]

*Replevin: money in bag deposited by agent.*—Certain money was deposited with the Safe Deposit Company, and was sealed up in a canvas bag, marked with a tag, on which was written the name of the owner's agent, to whom it had been given to pay the owner's taxes. It was seized on execution issued against the agent. *Held*, That replevin would lie for the recovery of money so situated.

*Ibid.: Ibid.; Demand.*—In such cases demand is not necessary to maintain the action. [Sharon v. Nunan. S. C. of California.]

The mere commission of a crime is not of itself sufficient to establish insanity and suicide is not even presumptive of insanity. But where the suicide is preceded by the murder or attempted murder of members of his own family without apparent cause by the suicide, and the burning of his property, the acts are very pertinent to the issue as evidence of insanity.

The insured, after thus assailing his family, fired his buildings, and then committed suicide.

*Held*, That if the insured was insane, the destruction of the buildings was not a voluntary act which relieved the company from liability.

*Held*, That the negligence of the insured does not relieve from liability in the absence of fraud or design. [Karow et al. v. Continental Ins. Co. of N. Y. Supreme Court of Wisconsin.]

*Statute of limitations: devise; trust; legacy; equitable charge.*—A testator devised all his real estate to his son; he, however, to pay the testator's daughter a legacy in annual instalments. *Held*, 1. That the devise did not create a continuing and subsisting trust within the purview of § 6 of the Code S. & C., 941. 2. That the legacy was an equitable charge upon the estate devised; and that an action by the daughter to recover the unpaid instalments was barred after the lapse of six years from the time the right of action accrued on said instalments respectively. [Yearly v. Long. S. C. Commission of Ohio.]

*Criminal procedure; Arson; Indictment; Variance.*—The defendant was indicted for wilfully burning in the night-time "a certain manufactory, used for the manufacture of fish poles, the same being, with the property therein contained, of the value of one thousand dollars, of the property of one P." The evidence showed that the building burned was the property of P., and was of the value of four hundred dollars; that the personal property contained in the building belonged to one B, excepting property of a small amount; and that the property belonging to B was of the value of one thousand dollars. The statute under which the indictment was drawn prescribed a penalty for one who should wilfully burn in the night-time the manufactory of another, "being, with the property therein contained, of the value of one thousand dollars." *Held*, That there was not a fatal variance between the allegation and the proof.

*Ibid: Ibid; evidence.*—At the trial of an indictment for arson the defendant's son testified that, at the fire or soon after, he asked the defendant, "What did you want to set this afire for;" and that the defendant made no reply. The court instructed the jury that if the defendant did not hear the question he was not bound to answer; if he did the jury would consider whether or not under the circumstances he was bound to answer, and how far any inference was to be drawn against him for not answering. *Held*, That no error appeared. [Commonwealth v. Brailey. Supreme Judicial Ct. of Massachusetts.]

*Railroad: ticket; contract.*—The ticket given to a railroad passenger, upon payment of his fare, is a receipt merely, and not a contract.

*Ibid.: Ibid.; duty of passenger.*—A railroad passenger, having a ticket to a certain destination, cannot demand to be taken there in order to alight, if the train, by the rules of the company, does not go to or stop at such station. It is the duty of the passenger to ascertain what train will stop at his destination. [Logan v. Hannibal and St. J. R. R. Co. S. C. of Missouri.]

*Mortgage: foreclosure; lien of judgment creditor.*—Where, in foreclosure proceedings, a judgment creditor was made a party defendant, and a sale was made pursuant to a decree of foreclosure, an assignee of the judgment creditor giving no notice of the assignment, actual or constructive, cannot, as against the purchaser, have the lien of the judgment declared paramount to the title of the purchaser. [White v. Bartlett, S. C. of Nebraska.]

A suit may be properly instituted on the contract against a benevolent association for the amount of the sum insured. The remedy is not by mandate to compel an assessment of the members.

Where the suit is on a written contract for money shown to be due, it is not necessary to allege a written demand therefor.

Where false answers in the application are set up as a defense, it is a good reply that the company with a knowledge of the facts, made and collected assessments against the insured.

Depositions of an attending physician as to matters communicated to him by the patient are inadmissible as evidence. [Excelsior Mutual Aid Association v. Viola V. Riddle. Supreme Court of Indiana.]

## Land Department.

Furnished by SICKELS & RANDALL,  
Attorneys in Land and Mining Cases,  
WASHINGTON, D. C.

OLATHE AND SEARL PLACER MINES

vs.

MANDELLE LODGE.

*Known Lodes in Placer Claims.*—Section 2333, Revised Statutes, expressly carves out from a patent for a placer claim, all known lodes found therein at the date of the placer application.

*Surface Ground.*—Where the lode claimant failed to adverse notice application, he is restricted to his lode, and twenty-five feet of surface ground on each side thereof.

*Character of Proofs Required.*—Before an application for a lode claim within a patented placer claim can be received, the applicant must affirmatively and satisfactorily show by corroborated affidavits, his acquaintance with, and the actual existence of, the lode and mine, and its true location, and that its existence was known prior to the date of the placer application. He must also prove his possessory right, and the value of work performed, as in other applications.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., June 25, 1883.

GENTLEMEN: This office has examined the appeals of George Berry and A. D. Searl, owners respectively of the Olathe and Searl placer claims, from your action of May 20, 1882, denying motions to dismiss application of Nicholas Finn for a patent for the Mandelle Lode.

It appears that April 15, 1882, Finn applied for a patent for 300 feet in width by 1500 feet in length on the Mandelle Lode, situate partly within said placer claims.

Motions to dismiss the application were filed by said Berry and Searl, and denied by you May 20th.

The dismissal was asked for on the ground

that the land claimed by Finn was, to the extent of the greater portion thereof, included in said Olathe and Searl placer claims, and therefore the application ought not to be allowed, and that there is no such lode as claimed by Finn, and on other grounds, being in the nature of protest.

You held in denying the motions that the records show that there existed, prior to the date of the application of either the Olathe or Searl placers, the claim known as the Mandelle lode; and that therefore the vein or lode so known to exist was expressly excepted from the patent for the Olathe placer, and that the applicant having filed an amended application, excepting therefrom the ground in conflict with the Searl placer, the objection on that ground was thereby removed.

It appears from a copy of certificate of location filed that the Mandelle lode was located March 24, 1879, by John McKenzie, A. A. Swan and Thomas Guest.

The application for the Searl placer was filed July 5th, and that of the Olathe, July 7, 1879. Finn claims under locations made by himself May 10th and June 11th, 1881, and also claims through various conveyances to be possessed of the claim originally located by McKenzie, Swan and Guest, and that they are one and the same lode or claim.

In the case of Becker et al. v. Sears, the Hon. Secretary of the Interior held that section 2333 U. S. R. S., carved from a patent to a placer claim all known lodes found therein at date of application, together with twenty-five feet of surface ground on both sides as incident thereto. There is no sufficient evidence before me, however, showing that the lode in question was really known to exist at date of the placer applications. Furthermore, it does not appear that the lode claimant filed any adverse claim against either of said placer applications, and having failed to do so within the statutory period, he must now, under the decision of the Hon. Secretary in the case of the Shonbar lode, if entitled at all, be restricted to his lode claim and only twenty-five feet of surface ground on each side.

But before application for the lode claim can be received, applicant must affirmatively and satisfactorily show his acquaintance with and the actual existence of the lode and mine, and its true location within the placer, and that its existence was known prior to date of the placer application, and he must set forth such facts as clearly show how the existence of such lode at that time became known, and a statement under oath of mere conclusions or opinions, will not be

be sufficient to establish the existence of the lode. Applicant's affidavit must be full, clear and specific upon the points indicated. He must also prove his possessory right and value of work as in other applications, and in addition to the other proofs required by law and official regulations in mining applications, the allegations of applicant above mentioned must be satisfactorily and fully corroborated by at least two disinterested and credible witnesses familiar with the facts. Such a showing the applicant has failed to make.

You are instructed, however, that should applicant make such showing, and present such application under oath for the lode, showing its actual location and extent by plat and field notes, such application restricted to the lode and twenty-five feet of surface on each side, should be received, and applicant allowed to proceed under the statute.

For reasons above stated Mr. Finn's application, upon his present showing, must be, and the same is hereby rejected.

Your decision is accordingly reversed.

You will notify the parties in interest and allow right of appeal.

Very respectfully,

N. C. MCFARLAND,  
*Commissioner.*

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## The Courts.

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### EQUITY COURT.—Justice James.

JULY 28, 1883.

Sacchi v. Wm. Mc E. Dye. Case certified to General Term.

Brown v. Brown. Sale confirmed nisi.

Robinson v. Johnson. Time limited to take testimony.

Keyes v. Keyes. Order of publication.

JULY 30, 1883.

Holliday v. Holliday. Sale confirmed nisi.

O'Hare v. Walker. Title vested in complainants.

Schlool v. Schlool. Trustee authorized to accept bid.

Phillips v. Walbridge. Referred to auditor.

Temple v. Worthington. Sale confirmed nisi.

Crow v. Boucher. New parties admitted.

Ketchem v. Georgetown College. Sale confirmed nisi.

Cousins v. Strasburger. Examiner to take testimony.

Hamilton v. Morrison. Remanded to auditor.

Cornelius v. De Vaughn. Sale confirmed nisi.

Speer v. Coyle. Sale finally ratified.

Roy v. Roy. Injunction modified.

Mason v. Bryan. Complainant ordered to file auditor's report.

JULY 31, 1883.

Rothrock v. Parker. Restraining order dissolved.

Reed v. Reed. Report of auditor affirmed.

National Savings Bank v. Adams. Sale finally ratified.

Hersey v. Hersey. Divorce decreed.  
 Woodruff v. Nat. Shelf & File Co. Injunction granted.  
 Shepherd v. Brown. Certified to General Term.  
 Steinacker v. Winder. Parties allowed to intervene.  
 Phillip v. Walbridge. Petition denied.  
 Starr v. Treackle. Receiver appointed.  
 Bamberger v. B. & P. R. R. Co. Injunction granted.  
 Jackson v. Blackwood. Auditor's report confirmed.  
 July Term adjourned *sine die*.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

AUGUST 6, 1883.  
 24697. Hyter Myers v. Jeremiah Gordon et al. Judgment of Justice Helmick, \$67.  
 24698. Thos. J. Martin & Co. v. George A. O'Hare. Note and account, \$394.57. Plffs atty, L. M. Saunders.  
 AUGUST 7, 1883.  
 24699. Frank Hume et al. v. George W. Baanaga. Note and account, \$303.14. Plffs atty, T. A. Lambert.  
 24700. Srouse & Bro. v. Samuel Bensinger. Account, \$679.11. Plffs attys, Hanna & Johnston.  
 AUGUST 8, 1883.  
 24691. Edward L. Palmer & Co. v. George A. O'Hare. Account, \$86.74. Plffs atty, R. W. McPherson.  
 24692. Robert A. Golden v. William M. Cross et al. Account, \$438.91. Plffs attys, Hine & Thomas.  
 24693. Albert E. Boone v. Flora B. Cabell. Acc't, \$1,700. Plffs atty, C. Pelham.  
 24694. William T. Messersam et al. v. Joe L. Savage. Account, \$143.63. Plffs attys, Carusi & Miller.  
 24695. Emanuel Hecht v. George Golding. Damages, \$16,000. Plffs attys, Harris and Oliver.

### IN EQUITY.—New Suits.

JULY 28, 1883.  
 2690. U. H. Bidenour v. Charles McClelland et al. To declare deed of trust void. Com. sol., W. F. Bell.  
 JULY 30, 1883.  
 2691. John M. Keating et al. v. George McLaughlin et al. For partition by sale. Com. sol., John F. Ennis.  
 JULY 31, 1883.  
 2692. Sarah M. Starr v. Mary J. Treackle. For receiver. Com. sols., Hagner & Maddox. Defts sol., R. S. Davis.  
 AUGUST 1, 1883.  
 2693. In re John H. Smith, upon petition of Amanda Reid. De lunatic inquiring. Com. sol., Belva A. Lockwood.  
 2694. National Union Insurance Co. v. John Tyler et al. Com. sol., A. S. Worthington.  
 2695. John J. Schilling et al. v. Henry L. Cranford et al. Injunction, &c. Com. sols., Hunton and Thompson.  
 2696. Valentine Grue-er v. John V. Mattern et al. Injunction, &c. Com. sols., Oritenden & Mackey.  
 AUGUST 3, 1883.  
 2697. Bennett B. Smith v. William T. Bailey et al. Injunction. Com. sol., Thomas F. Miller.  
 2698. John J. Calvert v. Paul Eaton et al. For release. Com. sol., Jesse H. Wilson. Defts sol., E. H. Leopold.  
 AUGUST 4, 1883.  
 2699. ———  
 2670. Union Mutual Life Insurance Co. v. William W. Post et al. Interpleader. Com. sol., R. Wilson.  
 AUGUST 7, 1883.  
 2671. Elizabeth Meem et al. v. Henry Marden et al. For conveyance. Com. sol., R. P. Jackson.

### PROBATE COURT.—Justice James.

JULY 24, 1883.  
 Estate of Martha A. Young; administrator bonded and qualified.  
 Estate of John G. Killian; inventory returned by administrator and sale ordered.  
 Estate of Bennett Lee; administratrix bonded.  
 JULY 25, 1883.  
 Will of Ida K. Davis; filed and fully proved.  
 Will of Cornelius O'Donnoghue; fully proved.  
 Estate of George McDermott; receipt of distributees filed with account of administrator.  
 JULY 26, 1883.  
 Oedell of Charles Case; returned commission duly executed proving same.

Will of John Coyne; proved by one witness.  
 Estate of Catharine Miller; receipt of commissioner for letter containing will.  
 Estate of Sarah A. Keating; administrator qualified.  
 Estate of Chas. H. Coombs; administrator bonded and qualified.  
 Emma J. Winingder, guardian; sale of lot ratified.  
 Will of John B. Ruth; filed and proved by one witness.  
 Estate of Ella S. Dodge; notice appointing day of settlement.

JULY 27, 1883.

Estate of James Murt; citation against widow and children returned served.  
 Estate of Mary Palmer; petition for administration; citation against brother and sister.  
 Estate of Thomas Barry; answer of guardian to exceptions; affidavit of ward filed.  
 Estate of Eda K. Davis; petition of executor for letters; order of publication.  
 Estate of John Coyne; proof of publication filed; will admitted to probate and letters granted.  
 William W. Hicks, guardian; appointed and bonded.  
 Estate of Chauncey Smith; petition for transfer of bonds.  
 Will of Daniel McCarthy; filed and fully proved and admitted to probate; letters granted to executrix.  
 Estate of Philip Meredith; will admitted to probate; letters granted; administratrix bonded and qualified.  
 Estate of Lewis B. Wynne; affidavit of executor filed.  
 Thos. E. Waggaman, guardian; petition for instructions referred to register of wills.  
 Estate of Fanny W. Callahan; report of administrator filed.  
 Estate of Serena Mason; vouchers showing expenditure filed.  
 Thos. Enright; guardian bonded.  
 Accounts passed:  
 Estate of Phoebe T. Leich; first account of executors.  
 Estate of Caroline M. Levely; first account of executors.  
 Estate of Letitia W. Murphy; first account.  
 Landon W. Worthington, guardian; third account.  
 Estate of Robert Davidson; request to sequester in bulk.  
 JULY 30, 1883.  
 Estate of Susan S. March St. Clair; inventory returned by administrator, c. t. a.  
 Estate of Edward T. Tayloe; order of July 10, 1883, confirmed; final account of executor passed.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Coyne, late of the District of Columbia, deceased.  
 All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.  
 Given under my hand this 2d day of August, 1883.  
 R. F. BITTENHOUSE, Administrator c. t. a.  
 GORDON & GORDON, Solicitors. 32-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 7th day of August, 1883.

ELIZABETH J. MEEM and others } No. 8,671. Eq. Doc.  
 v.

HENRY MARDEN and others.  
 On motion of the plaintiffs, by Mr. R. P. Jackson, their solicitor, it is ordered that the defendants, Henry Marden, Thomas Marden, John M. Marden, Hannah M. King, Charlotte M. Winn, Albert M. Winn, Annie M. Moorman and Robert M. Moorman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.  
 A true copy Test: 32-3 E. J. Meigs, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 7th day of August, 1883.

THE NATIONAL UNION INSURANCE CO. } No. 8664. Eq. Doc. 23  
 v.

JOHN B. TYLER ET AL.  
 On motion of the plaintiff, by Mr. A. S. Worthington, their solicitor, it is ordered that the defendants, Albert O. S. Kelley, Thomas B. Bryan, Margaret Heisel and Henry E. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.  
 True copy. Test: 32-3 E. J. Meigs, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 7, 1883.**

In the matter of the Estate of Catharine Ragan. Application for Letters of Administration on the estate of Catharine Ragan, of the District of Columbia, has this day been made by Richard F. Harvey.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **32-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. August 8, 1883.**

In the case of David Hagerty, Administrator of Frank Hagerty, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 14th day of September A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**FRED. W. JONES, Solicitor for Administrator. 32-8**

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

**EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8566, Docket 23.**

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 24th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$291.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$600 to Robert E. Frey, as Treasurer of 12th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengle, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**

A true copy. Test: **R. J. MEIGS, Clerk.**  
**32-6 By M. A. OLANCEY, Asst. Clerk.**

*Legal Notices.*

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Philip Meredith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1883.

her  
**ELIZABETH M. FULTON,**  
mark. **Executrix.**

Witness: **Geo. E. JOHNSON,**  
**A. B. WILLIAMS, Solicitor.**

31-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**JAMES CORNELIUS ET AL.**

Eq. 7,919. Doc. 21.

**JOSEPHINE DE VAUGHN ET AL.**

Upon consideration it is by the court this 30th day of July, 1883, ordered, that the sales reported this day by W. Wheeler and E. H. Thomas, trustees, to Sarah M. Evans, of property mentioned in said report and to James A. Hunt, of property mentioned in said report, be ratified and confirmed on the 1st Tuesday in September next, unless cause to the contrary be shown on or before said last mentioned day. Provided, a copy of this order be published once a week for each of three successive weeks on or before said day in the Washington Law Reporter, and provided, that a copy of said trustee's report and of this order be served within one week from this date on said James A. Hunt. And it is further ordered and decreed that said trustees pay all taxes and assessments, out of any money other than the money in their hands arising from said above reported sales, on property mentioned in this cause and heretofore sold by them, as far as the said money in their hands will go.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. **31-3 Test: R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Caroline O. Denham, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

**31-3 LEMUEL J. DENHAM.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 3, 1883.**

In the matter of the Will of Bernhard Berens. Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of Bernhard Berens, of the District of Columbia, has this day been made by Magdalena Berens.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of August next, at 11 o'clock a. m., to show cause why probate of said will and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **31-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

**JOHN HUNTER JARDELLA**

No. 3592. Eq. Doc.

**JOHN T. BULGER ET AL.**

On motion of the plaintiffs, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendants, John T. Bulger and Rev. W. T. Durham, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: **30-3 R. J. MEIGS, Clerk.**

*Legal Notices.***THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cornelius Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

THOMAS J. LUTTRELL, Executor.  
HINN & THOMAS, Solicitors. 31-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of July, 1883.**

MARY JOSEPHINE KEYES }  
v. } No. 3646. Eq. Doc. 23.  
RICHARD THORNTON KEYES.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Richard Thornton Keyes, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 31-3 Test: E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES F. HALIDAY ET AL. }  
v. } No. 334. Equity. Rule 5.  
THOMAS J. HALIDAY ET AL.

James S. Edwards, trustee herein, having reported a sale of original lot sixteen (16), in the square one hundred and four (104), in Washington City, in the District of Columbia, to John E. Francis, for \$1,840.40;

It is, this 30th day of July, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 4th day of September, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 31-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henrietta Dorsey Handy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1883.

LOUISA WILSON.  
E. D. F. BRADY, Solicitor. 30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. July 26, 1883.**

In the case of William A. Gordon, Administrator c. t. a. of Ella S. Dodge, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 30-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

SARAH M. STARR, Executrix.  
HAGNER & MADDOX, Solicitors. 29-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Isabella Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of July, 1883.

FRANCES E. R. BRONWELL,  
ISABELLA HAGNER. 30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martha A. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of July, 1883.

JOB BARNARD, Administrator. 30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Bennett Lee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1883.

REBECAH W. LEE, Administratrix.  
A. C. RICHARDS, Solicitor. 30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of July, 1883.**

ELIZA A. OFFUTT }  
v. } No. 3634. Eq. Doc., 23  
GEORGE A. BOHRER AND OTHERS.

On motion of the plaintiff, by Mr. R. P. Jackson, her solicitor, it is ordered that the defendants, John M. P. Olitz, Mary Olitz, Julius S. Bohrer, Lucinda Bohrer, E. Rush Bohrer and William H. Bohrer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 30-3 E. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of July, 1883.**

RUFUS A. MORRISON }  
v. } No. 3650. Eq. Doc. 23.  
CATHERINE BOYLAND AND THE }  
UNKNOWN HEIRS AT LAW OF }  
MICHAEL DOYLE.

On motion of the plaintiff, by Mr. James H. Smith, his solicitor, it is ordered that the defendants, the unknown heirs at law of Michael Doyle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 30-3 E. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. July 27, 1883.**

In the matter of the Will and Codicil of Ida K. Davis, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Robert G. Dyresforth.

All persons interested are hereby notified to appear in this court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 30-3 H. J. RAMSDELL, Register of Wills.

*Legal Notices.***THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

CHARLES WALTER, Executor. 29-3  
CHAS. A. WALTER, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 26th day of July, 1883.**

AUGUSTA McBLAIR ET AL.  
Complainants

No. 8668. Eq. Doc. 23.

THOS. E. WAGGAMAN ET AL.  
Defendants.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Sarah Ann Newton, Oatharine Ann Munson, Miles O. Munson, Margaret M. Summers, Simon L. Summers, Amelia A. Harris, Marcellus W. Harris, Ella L. Stapp, Butler B. Stapp and William D. W. Newton, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 30-3 R. J. Maies, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS. W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

ALBERT HARPER. 29-3  
C. F. ROWE, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

DANIEL O'O. CALLAGHAN, 29-3  
Administrator, 436 7th street, n. w.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence B. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.

29-3 CHARLES E. O'REECCY, Administrator.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix. 29-3  
W. W. BOARDMAN, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix. 29-3  
LEON TOBRINER, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Susan S. March St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a. 29-3  
ROBERT CHRISTY, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jane E. W. Kelly, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a. 29-3  
JAMES H. SMITH, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB, 29-3  
CHAS. J. LUSEK, Administrators.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 HENRY E. DAVIS, Administrator c. t. a.



# Washington Law Reporter

WASHINGTON - - - - - August 18, 1888.

GEORGE B. CORKHILL - - - EDITOR

## How to Explain to Your Client Why You Lost His Case.

The necessity, more or less disagreeable, according to circumstances, of making the explanation, confronts in nearly every case the lawyer who represents the losing side. Most practicing attorneys have had, or may expect the experience—none can reasonably hope for entire exemption.

The following humorous observations of Mr. Byron Bacon, of Louisville, upon the subject, at the recent banquet of the Kentucky Bar Association in that city, will be generally relished. Mr. Bacon, in inimitable style, told "How to explain to your client why you lost his cause":

I deprecate any thought that I respond because, from a more extended experience than my legal brethren, I bring to the solution of this question the exhaustive learning and skill of the specialist. The characteristic modesty of our profession forbids that I should arrogate to myself to instruct the eminent lawyers around me wherein they doubtless have attained the perfection that long practice can give.

I therefore assume that the subject was proposed for the edification of the novitiates, those young gentlemen to whom Blackstone so often and so feelingly alludes, who, after a long and laborious course of study, have been found, upon an examination by the sages of the law, not to have fought a duel with deadly weapons since the adoption of the new Constitution, and have been admitted to our ranks. To them, then, I shall offer briefly some suggestions upon this point, hoping that they may not have need of them upon the termination of their first case.

The question as framed is not unlike that with which Charles II long puzzled the Royal Society. He demanded the cause of phenomena, the existence of which he falsely assumed. The answer was simply the denial of the existence of the phenomena. What lawyer ever attempted to explain the loss of a case upon the hypothesis that he had lost it?

That a lawyer cannot lose a case is as well

established a maxim as that "the king can do no wrong," or that a tenant cannot deny his landlord's title. Eliminate this error in our question, and it is easy of solution.

Coke tells us that "law is the perfection of human reason;" Burke that it is the most excellent—yea, the exactest of the sciences; and the eloquent Hooker, that her seat is the bosom of God, her voice the harmony of the world, all things in heaven and earth do her homage—the least as feeling her care, and the greatest as not exempt from her power. But we know that if it be the purest of reason, the exactest of sciences, its administration is not always intrusted to legal scientists or the severest of logicians. We know that the great, the crowning glory of "our noble English common law" is its uncertainty, and therein lies the emolument and pleasurable excitement of its practice.

If, oblivious of this, you shall have assured your client of success in the simplest case, the hour of his disappointment will be that of your tribulation, for which professional experience can extend to you no solace or aid.

But your client's cause has resulted unfavorably. You, of course, are never to blame; the fault is that of the judge, the jury, or your client himself, and, it may be, of all three. It becomes your duty to divert the tide of your client's wrath into those channels where it can do the least possible harm. If he be a crank and shoots the judge or cripples a jurymen, they fall as blessed martyrs, and their places and mantles are easily filled, but the place of the lawyer is not readily filled, as one of America's sweetest poets, Mr. George M. Davis, has beautifully expressed it in a touching tribute to our professional worth, which, for delicacy of sentiment, boldness of imagery and beauty of diction, is unequaled in the whole range of English poesy:

"Judges and juries may flourish or may fade;  
A vote can make them as a vote has made;  
But the bold lawyer, a country's pride,  
When once destroyed, can never be supplied."

The selection, then, of a target for your client (I use the word target metaphorically) must rest upon the peculiar facts and circumstances of the case and the "sound discretion," as the venerable Story has it, of the counsel. But avoid, if possible, imputing the blame to your client, for although I have known this to be attended with very happy results, yet his mood at such times is apt to be homicidal, and besides, you should bear in mind that your aim is to conciliate him.

First, as to the jury. Upon this head I need



not enlarge, but only remind you that you are not held by the profession as committed or estopped by any eulogism, however glowing, you may have pronounced during the progress of the trial on their intelligence or integrity. It is only in the capacity of a scape-goat that the American juror attains to the full measure of his utility, and as such he will ever be regarded by our profession with gratitude not unmingled with affection.

But it is to the judge that we turn in this extremity with unwavering confidence. The serenity and grandmotherly benignity that sits enthroned upon his visage is to the layman that placidity of surface which indicates fathomless depths of legal lore; to the lawyer it bespeaks the phlegmatic temperament of one whose mission is to bear uncomplainingly the burdens of others.

It comes upon you like a revelation, that your elaborate preparation, your weeks of study, your voluminous brief, are all for naught; that the impetuous torrent of your eloquence has dashed itself against his skull only to envelop it in fog and mist, and, more in sorrow than in anger, you confess that the presumption that every man knows the law cannot be indulged in his favor. Even your luminous exposition has failed to enlighten him. You need not spare him. He thrives on abuse. Year in and out he bears the anathemas of disappointed lawyers and litigants with the stolid indifference of Sancho Panza's ass in the valley of pack-slaves or under the missiles of the galley-slaves, and society comes finally to regard him pretty much as was Sancho's ass. It berates him, overtakes him, half-starves him, and loves him.

But seriously considered, our question is but a long-standing and harmless jest of the bar, meaningless in actual practice.

The lawyer is untiring in his client's behalf, and his client knows, whatever be the result, that he has had the full measure of his lawyer's industry, zeal and ability, and requires no explanation.

Lord Erskine said, that in his maiden speech "he felt his children tugging at his gown, and heard them cry, 'Father, now is the time for bread.'" The British bar applauded the sentiment. But the American lawyer, throughout the case feels his client tugging at his gown, and, if unsuccessful, is sustained by the consciousness that he has done his whole duty as God has given him to see and perform it, and if he wants further consolation he can open one of the oldest of all the books of the law, and there read these words, which will soothe his wounded spirit, and possibly best answer the question of to-night:

"I turned, and saw under the sun that the race is not to the swift, nor the battle to the strong, neither yet is bread to the wise, nor yet riches to the man of understanding, nor yet favor to the man of skill, but time and chance happeneth to them all."

## Supreme Court District of Columbia GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

B. U. KEYSER, RECEIVER,

vs.

JANE C. HITZ.

LAW. NO. 22,261.

{ Decided June 26, 1883.

{ Justices HAGNER, COX and JAMES sitting.

1. The act of Congress of June 30, 1876 (19 St., 64), is substantially an enactment that the acts of Congress relating to national banks, including the provisions of Section 5154, providing for the conversion of banks into national banks, shall be applicable to *savings* and other banks in this District, except that savings banks existing at the time of the passage of the act are not required to have a capital of \$100,000 in order to be converted into national banks. It was competent, therefore, for a savings bank organized in this District under the General Incorporation acts of May 5 and June 17, 1870 (R. S. D. C., § 553), to avail itself of the law for converting banks into national banks.
2. The certificate of the Comptroller of the Currency is conclusive as to the regularity of the proceedings by which any bank has been converted into a national bank.
3. Where a shareholder of a corporation is called upon to respond to a liability as such, he is not permitted to deny the existence of such corporation.
4. Where the owners of more than two-thirds of the stock of a bank consent to the conversion of the bank into a national bank, such a conversion may take place without the concurrence of the remaining stockholders.
5. While it might be more regular, on the conversion of a bank into a national bank, for a new stock book to be opened and new certificates to be issued in the name of the national bank, yet as there is nothing in the law prescribing the form of the stock book, or of the certificates of stock, there is nothing to prevent the new bank from treating the old books and certificates as sufficient evidence of title in the concern; neither the rights nor liabilities of the stockholders could be effected by the mere omission to issue a new form of stock certificate to them. To hold otherwise would be to allow all the stockholders to escape liability by the mere omission of the formality of issuing the shares in a new form.
6. Where a stockholder of the old bank has given his consent that the stock should be converted into stock of the national bank, he becomes by

virtue of that consent a stockholder in the new bank, notwithstanding any omission to issue new certificates of stock.

7. Under the Married Woman's Act of 1869, R. S. D. C., the right of a married woman to hold bank stock, acquired by her during marriage, otherwise than by gift or conveyance from her husband, is as absolute as if she were unmarried; she can convey, devise and bequeath it in the same manner and with like effect as if she were unmarried, and may contract, sue and be sued in her own name, in all matters having relation to it; she is also amenable to all the consequences of its ownership and of its conversion into national bank stock, including the individual responsibility of stock holders, in the same manner as if she were a *feme sole*.
8. Where the wife acquires property by gift or conveyance from her husband, she holds it, as she would at common law, with a qualified property in her husband, being unable to assign it without his consent, and liable, if it is a *chose in action*, to have it reduced to his possession.
9. Stock of an incorporated company is a *chose in action*.
10. Where a married woman holding savings bank stock derived by gift or conveyance from her husband agrees with his consent to convert the stock into national bank stock, she thereby regularly and legally acquires title to the latter stock; and although she still holds the new stock subject to the marital rights of her husband, she is nevertheless subject to the individual responsibility of national bank stockholders, and may be assessed for all losses and be compelled to pay out of her other estate to the amount of the par value of her stock.
11. It seems, however, that it might be otherwise if the transfer of the stock to her and its subsequent conversion were made without her knowledge or consent.
12. The liability incurred by a holder of national bank stock, to be assessed to the amount of the par value of the stock for all losses of the bank, is a statutory liability, and not a contract one. It is a liability imposed by the statute as an incident of the ownership of the stock, and attaching to all who are capable of that ownership, without reference to any supposed voluntary assumption of the liability by express or implied contract. Therefore, where national bank stock is held by a *feme covert*, either in her own right or subject to the common law marital rights of her husband, the liability to be assessed affects her alone, and a suit to enforce the collection of the assessment is properly brought against her without joining her husband, as would be necessary in the enforcement of any common law obligation or liability of the wife.

THE CASE is stated in the opinion.

ELLIOT & ROBINSON for plaintiff.

ENOCH TOTTEN for defendant.

Mr. Justice COX delivered the opinion of the court.

On the 24th of Sept., 1872, the German American Savings Bank was incorporated under the General Incorporation acts of May 5 and June 17, 1870, with a capital of \$127,100.

On the 21st of Jan., 1876, John Hitz transferred to the defendant, Jane C. Hitz, his wife, 175 shares of stock of that bank, of the par value of \$17,300.

On the same day, Wm. F. Mattingly transferred 10 shares, R. B. Donaldson 10 shares and C. E. Prentiss 7 shares of the stock to Mrs. Hitz, thus making her the owner of 200 shares, of the par value of \$20,000.

In further proof of her ownership, three checks were put in evidence, dated respectively, May 1, 1876, Nov. 1, 1876, and May 1, 1877, each for \$800, signed by C. E. Prentiss, cashier, in favor of Mrs. Hitz, for dividends upon the stock in her name, all apparently indorsed by her to her husband.

On the 7th day of May, 1877, a paper was signed apparently by all the stockholders, including Mrs. Hitz, authorising and empowering the trustees to change and convert the savings bank into a national banking association, under acts of Congress in such case made and provided, and to execute the articles of association and organization certificate required by the statute, &c., the new bank to bear the name of the German American National Bank of Washington.

On the 14th of May, 1877, J. S. Langworthy, acting comptroller of the currency, executed the certificate required by law, that the German American National Bank of Washington is authorized to commence the business of banking, as provided in section 5169 Rev. Stat.

It does not appear that any new stock book was opened, or new certificates of stock issued in the name of the new bank, but the books of the old bank were transferred to the new, and the stockholders in the old, were assumed to be stockholders in the new bank.

Sworn lists of these stockholders of the German American National Bank, were, from time to time, furnished to the Comptroller of the Currency, in conformity with law, all of which included Mrs. Hitz's name.

On the 20th of October, 1878, the German American National Bank, of Washington, failed and suspended payment, and the plaintiff was appointed receiver of the bank, by the comptroller of the currency.

On the 11th of June, 1880, the comptroller certified that, upon an examination of the affairs of the bank, he found it necessary to enforce the individual liability of the shareholders of the bank, as provided by act of Congress, and thereupon ordered and made an assessment upon them to the amount of one hundred dollars, per centum, of the par value of the shares held by them respectively. On the same day, the receiver notified Mrs.

Hitz of this assessment and requested payment of \$50 on each share of her stock within 30 days, and \$50 more within 60 days, and these payments not having been made, the receiver instituted this suit against Mrs. Hitz, to recover the sum of \$20,000.

The defendant filed pleas: 1. That she was never indebted; 2. That she never owned or held any stock of the German American National Bank; 3. And that she is, and has been since August 5, 1856, a *feme covert*.

To the third plea, plaintiff replied that the stock was the property of the defendant, owned by her in her own right, with the consent and permission of her husband.

The defendant, by leave, filed a fourth plea, denying the existence of such a corporation as the German American National Bank.

At the trial, the court directed a verdict for the defendant.

The first question made in argument here relates to the legality of the conversion of the savings bank into the national bank. It is maintained for the defence that there is no authority of law for such conversion.

Section 5154, Rev. Stats., enacts:

"That any bank incorporated by *special law*, or any banking institution organized under a *general law of any State*, may, by authority of this act, become a national association," &c.

This applies, in terms, only to banks in the States where they are organized under general laws, and if the terms "*special law*" are not confined to State laws, they would not embrace the case of a bank organized under a general law of Congress, as was the case with the German American Savings Bank of this District.

But by act of Congress of June 30, 1876, it was enacted that:

"All savings or other banks, now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes, and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks; provided, that such savings banks now established shall not be required to have a paid-up capital exceeding one hundred thousand dollars."

It might be a question whether this act does not, by its own operation, and without the necessity of any action by the banks, convert them at once into national banks, or, at least, engraft upon their charters all the features of a national bank, not inapplicable to or inconsistent with them, of which the in-

dividual liability of shareholders would be one.

Such has not been the practical interpretation of the law, but it has been supposed, at least, to authorize the conversion of the banks in this District into national banks, and this interpretation has been acted on repeatedly.

It is maintained here, however, that the provision in the banking act for the conversion of other banks into national banks is not applicable to *savings banks*.

The reasoning on the subject is entirely theoretical and founded on the difference in the objects and operations of the two kinds of banks. The question, however, will have to be determined by an interpretation of the acts of Congress, and it seems to us to be very clearly determined by the proviso above cited, in the act of June, 1876, taken in connection with the prior acts.

The banking act provides, with reference to associations *originally* organized under it, "that no association shall be organized under this title with a less capital than *one hundred thousand dollars*." (Sec. 5138 Rev. Stat.)

Section 5154, which provides for the conversion of existing banks into national banks, enacts that, "no such association shall have a less capital than the amount prescribed for associations organized under this title."

A capital of \$100,000 was made a condition precedent to the original organization of a national bank, and to the conversion of another bank into one. The requirement of such a capital by the act is for no other purpose, and has reference to no other object.

Then the proviso in the act of June 30, 1876, that such *savings banks, now established* (i. e., in this District), shall not be required to have a paid-up capital exceeding one hundred thousand dollars, necessarily assumes and implies that the *conversion* feature in the national banking act, which requires such capital, would be applicable to such savings banks in the District of Columbia. It would have, otherwise, no meaning. It is substantially an enactment, that the laws relating to national banks, including the *conversion provision*, shall be applicable to savings and other banks in this District, except that savings banks, *now existing*, shall not be obliged to have a capital of \$100,000 in order to be converted into national banks.

We are satisfied, therefore, that it was competent for the German American Savings Bank to avail itself of the provision in the law for conversion into a national bank.

And the certificate of the comptroller of the currency, is conclusive, according to the decision of the Supreme Court in *Casey v.*

Galli, 94 U. S., 673, as to the regularity of the proceedings by which that conversion was effected.

We may add, that according to the same decision, where a shareholder of a corporation is called upon to respond to a liability as such, he is not permitted to deny the existence or the legal validity of such corporation. It is not, therefore, open to the defendant to rely upon this defense, if she is in the position of an ordinary shareholder in this bank.

Mrs. Hitz was a shareholder in the Savings Bank, as far as the books and transfers show. Excluding Mrs. Hitz, the owners of more than two-thirds of the stock consented to the conversion into a national bank and such conversion, according to the statute, took place without reference to her concurrence. She then became entitled to an equivalent amount of stock in the national bank. It would perhaps have been more regular for a new stock book to be opened and new certificates to be issued in the name, of the national bank. There is, however, nothing in the law, prescribing the form of the stock book or of the certificates of stock, and we see nothing to prevent the new bank from treating the old books and certificates as sufficient evidence of title in the new concern. Neither the rights nor liabilities of the stockholders could be effected by the mere omission to issue a new form of stock certificate to them. To hold otherwise would be to allow all the stockholders to escape liability, by the mere omission of the formality of issuing the shares in a new form.

All this is clear enough when applied to shareholders in the savings bank, who were, *sui juris*, capable of consenting and who actually did consent to the change.

But suppose the case of a shareholder who did not consent, or was not capable of consenting, to the conversion, and who did not, in fact, receive any certificate of stock in the new bank. Although, without his consent, the legal metamorphosis of the bank might be complete, could he be properly considered a stockholder in the new bank? For example, Mrs. Hitz, received no certificate of stock in the new bank, nor is any act of hers shown in connection with it, after its organization. If she became a stockholder in it at all, it must have been in virtue of her consent that her original stock should be converted into stock of the national bank. If she could consent to this, she was as much a stockholder in this new bank as the other original shareholders of the savings bank, notwithstanding any omission to issue new certificates. If not, it would be difficult to make out her membership in

the new concern. How far then, was she capable of giving that consent?

As to part of this stock, to the amount of \$2,700, it was, *prima facie*, acquired during marriage, otherwise than by gift or conveyance from her husband. It may be that he paid the consideration for it, and that it was really his gift, but that is not the present aspect of the case.

As to this much of the stock, then, under the Married Woman's Act of 1869, her right to it was as absolute as if she were unmarried; she could convey, devise and bequeath it in the same manner and with like effect as if she were unmarried, and might contract, sue and be sued in her own name, in all matters having relation to it, in the same manner as if she were unmarried. If so, she could consent, like a *feme sole* to its conversion into national bank stock, and take that in exchange for it, with all the incidents of such ownership.

We have little difficulty, then, in holding upon the present showing, that *quoad* this stock, the defendant was a *feme sole* and *sui juris*, and is amenable to all the consequences of its ownership and conversion which a *feme sole* would be, including the liability asserted in this action.

The larger part of the savings bank stock was transferred to the defendant immediately by her husband.

We see no legal difficulty in the way of the husband's making this transfer, so as to vest the legal title in the wife.

With his assent, she might acquire title by purchase from strangers, and except where it interferes with the rights of his creditors, there is no reason why he may not transfer the legal title to any of his property into her name, except that at common law a conveyance of realty could not be made directly from him to her. He, however, may have his own shares of stock cancelled and new ones issued to his wife, and her title will be the same as if they were derived from a stranger. She has the legal capacity to receive gifts, may be the obligee of a bond or receive a transfer of stock in moneyed corporations, and this, though the consideration may have proceeded wholly from the husband, and in such case she may hold against the legatees and heirs, but not against the creditors of the husband. (*Fisk v. Cushman*, 6 Cush., 20.) If, however, this property is *not* given to her *sole and separate use*, which I assume to be the case here, because there is nothing to indicate the contrary, it would still be subject to the husband's common law rights. Stock of an incorporated company is a chose in ac-

tion. The husband has but a qualified property in it—a right to reduce it to his possession by transferring it into his own name or selling it. A mere collection of the dividends would not be a reduction to his possession of the principal. *Burr v. Sherman*, 3 Bradf., N. Y., 85.

But until it is reduced to his possession it remains the wife's property, and survives absolutely to her, on her husband's death before her.

But, on the other hand, the wife cannot, during coverture, transfer her own choses in action of her own motion. And if Mrs. Hitz undertook, on her own responsibility, to convert her shares of savings bank stock, given to her by her husband, into national bank shares, all which involves a transfer of choses in action, in which the husband has a qualified property, it would probably have to be held a void proceeding.

Yet it must be deemed settled law that a wife may transfer her choses in action, with the consent of her husband.

It has been held, for example, that a bill of exchange or promissory note, payable to a married woman, may be endorsed in her own name, and the title passed, with the husband's consent. *Menkins v. Hernighi*, 17 Mo., 287; *McLain v. Weidmeyer*, 25 Mo., 364.

A transfer in exchange for other choses in action would seem to be clearly within the same rule.

If, therefore, Mrs. Hitz acted with her husband's consent, in agreeing to convert her savings bank stock into national bank stock, of which the fact of their uniting in the same power of attorney, for that object, would seem to be evidence, we have a regular and legal acquisition, by her, of the stock of the German American National Bank.

Does the usual consequence of that ownership devolve upon her, as to that part of the stock which she holds, only as a married woman would hold it, at common law, i. e., the personal liability to be assessed for losses to the amount of the par of the stock?

Section 5151, Rev. Stat., provides that, "The shareholders of every national banking association shall be held individually responsible, equally and rateably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof."

We can conceive a state of facts to which this would not apply, even where one is a nominal shareholder. If, for instance, the stock had been transferred to Mrs. Hitz, and the subsequent change made in the bank

without her knowledge or consent, it would be a very forced construction of the law which would extend it to such a case. But we assume for the argument, that the contrary was the case, since evidence was admitted without objection, tending to show that she received dividends on the stock and consented in writing, as a stockholder, to the change.

The statute contains no exception, in terms, in favor of married women. It seems hard, and therefore difficult to conceive that Congress intended that a married woman, acquiring her stock, it may be under marital influence, and also unable to alien it herself, should yet be held liable, in consequence of that ownership, to make good, out of her other estate, losses resulting from failure of the bank.

Yet we find even a harder case clearly enacted in the statute:

"Persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liability as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust funds would be if living and competent to act and hold the stock in his own name." Sec. 5152 Rev. Stat.

So that a young ward, whose guardian invests in national bank stock, without his knowledge or consent, and even where he is incapable of assenting at all, is liable, in his other estates under the individual liability clause in the statute.

This very difficulty was considered by the Court of Appeals of New York, in the case entitled, "In the matter of the Reciprocity Bank," 22 N. Y. R., 15, which arose under a statute of New York relating to State banks, similar to the U. S. statute, and in substantially identical terms.

The court said:

"The legislature, if it had thought proper to do so, might have made an exception in favor of married women, but no such exception was made. It is said that Mrs. Lansing, being under the disabilities of coverture, could not make a transfer of her shares and so avoid this liability, if she had wished to do so. This is a circumstance which might have been properly addressed to the legislative discretion if, indeed, the legislature had any discretion, under the injunction of the constitution, but it does not authorise the courts to allow an exemption, where neither the constitution nor the law has declared any. It is also said that *femes covert* are not liable to suit at common law;—and, in general, this is true. It is also

true that the apportionment of liability among stockholders in banks, when duly confirmed, becomes a judgment against each stockholder, to be enforced by execution as in other cases. But it was competent for the legislature to depart from the rules and analogies of the common law, and to make married women and their estates liable in this proceeding as other shareholders in banks are made liable. This, we think, has been done, in order to effectuate the policy in which the constitutional provision and the statute are founded. It might go far to defeat that policy, if married women could take and hold stock without liability to creditors."

In the same case, in the Supreme Court of New York, reported in 29 Barb., 382, it had been laid down that "married women could own stock in bank in their own right both at common law and under the statute of 1848 (of New York), and the legislature had the power to alter the common law so as to make them personally liable to the amount of their stock. It has thought proper to do so, and we are bound in this, as in all other cases, to enforce their liability."

In the case of *Anderson v. Line*, in the U. S. Circuit Court for the Eastern District of Pennsylvania, reported in 14 Fed. Reporter, 405, it appeared that shares of stock in a national bank were transferred by a husband directly to his wife, as in this case, and that suit was instituted against her and her husband. And the court held that the coverture did not exempt her from the liability imposed by the national currency acts upon all stockholders in national banks.

So that, whatever authority exists on this question is all in the direction of the *feme covert's* liability. It is obvious, as suggested in the New York case, that to maintain an exemption of married women from liability would greatly facilitate an evasion of the individual liability clause and the practice of frauds against creditors. It would only be necessary for husbands to put the stock in the names of their wives.

Again, sec. 5139 provides that a transferee of stock shall succeed to the rights and liabilities of the prior holder. If a married woman transfers the stock, and she is not liable, it might be held that her transferee is equally exempt. These are some of the serious difficulties in the way of sustaining the exemption of married women as shareholders.

In a general way, some of the cases speak of the liability of the shareholder as a *contract liability*; from which its non-existence is argued, in favor of persons not competent to contract to assume that liability. But it will

be found that the terms "*contract liability*" are used in the sense of being a liability which will survive against the estate, instead of dying with the person, as would a liability for a mere tort. In our view, however, and that is evidently held in the case already referred to, it is a liability imposed by statute, as an incident to the ownership of the stock, and attaching to all who are capable of that ownership, and without reference to any supposed voluntary assumption of the liability by express or implied contract. And as this is a statutory and not a common law liability, imposed upon the *feme covert* as a shareholder, it seems to us, as was also held in 29 Barbour, *supra*, that it affects her alone, and we think that suit is properly brought against her without joining her husband, which would be necessary in the enforcement of any common law obligation or liability of the wife.

The court below having held the wife's coverture a protection to her, it follows from the views before stated that a new trial must be ordered.

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## United States Court of Claims.

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### FLEMING HODGES vs. THE UNITED STATES.

This being the last case under the captured and abandoned property act, the court gives some interesting historical facts about the act, the business under it, and the cotton fund.

1. The captured or abandoned property act was signed by the President eight days after the Congress which passed it had expired, and is the only act since the foundation of the Government which any President has so signed. Yet the act has been treated as valid, and the court gives no opinion on the subject.
2. The number of cases in this court under the act, the amount claimed and the amount recovered stated.
3. The amount received from captured or abandoned property, the several amounts paid out and for what purposes, and the balance in the Treasury, stated.

RICHARDSON, J., delivered the opinion of the court.

The findings of fact show that the claimant did not own the cotton, the proceeds of which he claims in this action, and his petition must be dismissed.

With the disposal of this case all the business of the court under the act of March 12, 1863, entitled, "*An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States*" (12 Stats. L., 820), is brought to a close unless there should be a

new trial in the only case under the act now pending on appeal in the Supreme Court.

This circumstance suggests the propriety and usefulness of placing upon record some important facts in relation to the statute and the business which has been done in accordance with its provisions.

#### THE ACT.

The question has often been mooted, in case a bill is presented to the President within the last ten days of a session, so that he cannot have the full ten days allowed by the Constitution in which to approve or to return it to that House in which it originated, whether or not he may approve it after the adjournment or expiration of the Congress, so as to give effect to it as a valid law.

The Constitution provides, in Art. 1, sec. 7, as follows:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. . . .

If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

The uniform practice has been, from the first organization of the government to the present time, for the President not to approve after the adjournment of Congress any bills which he omitted to approve during the session, with the single exception of the abandoned or captured property act.

This act was passed during the very last days of the Thirty-seventh Congress, by the Senate, March 2, and by the House of Representatives March 3, 1863. It was not approved when that Congress ceased to exist by constitutional limitation, on the 4th of March, 1863.

The parchment roll in the State Department shows that President Lincoln, in affixing his name to it eight days after Congress had adjourned *sine die*, wrote with his own hand, "Approved March 12, 1863," so that there can be no doubt as to the correct date of approval. It was President Lincoln's custom to write, himself, the date of approval in all cases, and not leave that duty to a clerk.

The validity of the statute as a law has never been drawn in question. The executive

officers proceeded to act under its authority immediately after its approval, and so continued without objection from any quarter as to their right. The Court of Claims took jurisdiction of cases brought under the following clause of section 3:

"Any person claiming to have been the owner of any such abandoned or captured property may at any time within two years after the suppression of the rebellion prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

The Supreme Court of the United States also took jurisdiction of appeals in those cases, and acted upon them as brought under a valid law.

Congress, too, recognized its validity by amending it and extending its provisions in the third section of the act of July 2, 1864, ch. 125 (13 Stats. L., 376; Moore's Case, 10 Ct. Cls. R., 375), and by reciting in Revised Statutes, sec. 1059, among the cases in which the Court of Claims has jurisdiction, "all claims for the proceeds of captured or abandoned property, as provided in the act of March 12, 1863, entitled, 'An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States.'"

Moreover, Congress inserted in Revised Statutes, sec. 3689, a permanent annual appropriation "for the return of proceeds from the sale of captured and abandoned property in insurrectionary districts to the owners thereof, who may, to the satisfaction of the Court of Claims, prove their right to and ownership of said property;" and the judgments of the Court of Claims in such cases have been regularly paid by the Treasury Department.

Thus we find that the legislative, executive and judicial departments of the Government tacitly and without question have acquiesced in the validity of the statute thus approved.

We recite these facts for their historical interest, without expressing any opinion as to the effect of the approval of a bill by the President after the Congress which passed it has adjourned or expired. The question is now no longer of any practical importance as

to that act, since all litigation under its provisions has been completed.

#### BUSINESS UNDER THE ACT.

Claimants were allowed two years after the suppression of the rebellion in which to prefer their claims in this court. It was held by the Supreme Court that the date of the suppression of the rebellion was fixed by the proclamations of the President, the first, issued April 2, 1866 (14 Stats. L., 811), declaring the war to be closed in Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Tennessee, Alabama, Louisiana and Arkansas, and the other, issued August 20, 1866 (14 Stats. L., 814), proclaiming that the rebellion was at an end, and that peace, order, and tranquillity and civil authority existed in and throughout the whole of the United States of America. (*The Protector*, 12 Wall., 700.)

Parties, therefore, had the right to bring their actions at any time within two years after the latter date, when the rebellion was entirely suppressed.

The first case was filed March 8, 1864. The following statement shows the result of the whole business:

Number of cases, 1,578; number decided for claimant, 512; number decided for defendants, 1,066; amount claimed, \$77,785,962.10; amount recovered and actually paid, \$9,833,423.16.

This table includes some cases which were referred by special acts of Congress after the time for bringing suits under the original act had expired, in one of which the sum of \$58,419.20 was recovered.

#### THE CAPTURED OR ABANDONED PROPERTY MONEY.

Before the passage of the *captured or abandoned property act* there had existed almost from the beginning of the war an executive system for the collection of property captured from the public enemies or found abandoned by them in the States in rebellion, devised and carried on conjointly by the War and Treasury Departments. After the passage of that act not only the proceeds of the property collected by agents under its authority, but also the proceeds of all other property of like kind, previously or subsequently collected by the army, were treated as captured or abandoned property money. *Goodman v. The United States*, 14 C. Cls. R., 547.

The following statement shows the condition of that fund, and how much and for what purposes it has been drawn against:

Whole amount of the proceeds of captured or abandoned property, about .....	\$31,722,466 20
Paid for cost of collecting, sale, and other expenses.....	\$6,551,000 00
Transferred to Freedmen's Bureau.....	248,000 00
Deposited as internal revenue taxes and commercial intercourse fees.....	1,406,000 00
Released to claimants by Secretaries Chase, Fessenden, and McCulloch.....	2,550,675 24 10,750,675 24
Covered into the Treasury under resolution of March 30, 1863, No. 25, § 1 (15 Stats. L., 251), and previously.....	20,971,790 96
Paid under special relief acts of Congress .....	\$290,906 32
Paid on judgments against Treasury agents under Act of July 27, 1868, ch. 276, § 1 (15 Stats. L., 243).....	64,557 27
Paid on judgments of the Court of Claims under the <i>captured or abandoned property act</i> of March 12, 1863..	9,833,423 16
Paid to claimants by the Secretary of the Treasury under Act of May 18, 1872, ch. 172, § 5 (17 Stats. L., 134).....	195,896 25
Disbursed for expenses under <i>Resolution of March 30, 1863, No. 25, § 3</i> (15 Stats. L., 251).....	75,000 00
Total.....	\$10,459,763 00
Balance .....	\$10,512,007 96

There are now remaining on the docket of this court no cases presenting further claims on this money.

PROOF-READER, excitedly invading the editorial rooms—"Look here, Mr. Brains, here is a paragraph that speaks of 'parentless children.' You don't mean that, do you?" Brains—"Well, I should say not! Just put it 'childless parents.' Proof-reader—"Why, my dear sir, how can a parent be childless if he is a parent?" Brains—"Great snakes! That's a fact! Look here, Mr. Proof-reader, just make it 'childless couples,' and then you and I will go and have some lemonade."



Supreme Court of Pennsylvania.

SUSQUEHANNA MUTUAL FIRE INSURANCE CO.  
vs. SWANK.

An instrument may be reformed in case of fraud, accident or mistake, but where the mistake was the result of the supine negligence of a party who sleeps upon his rights until other duties and responsibilities have grown up, the law will not help him.

A party signed an application for a policy of insurance on the assessment plan, and afterward received and accepted such a policy. *Held*, That it was error in the court below to admit parol evidence to show that the application was made on the strength of the assurance made by the company's agent, that he, the agent, would take the application upon "the annual interest plan."

Error to the Court of Common Pleas of Somerset county.

Opinion by PAXSON, J. Filed December 30, 1882.

This was a suit against a member of a mutual fire insurance company to recover an assessment regularly made to cover losses and expenses incurred during the life of the policy. The policy was issued to the defendant on June 9, 1877, in pursuance of an application in writing made by the defendant on June 1, 1877. The policy was sent to and accepted by him. In August or September of the same year an assessment of \$24 was made upon his policy, which he paid under protest. The assessment for which this suit was brought was made September 13, 1878, for the sum of \$39, and defendant notified to pay the same on September 16th of the same month.

Payment was resisted upon the ground that the defendant had been told by the company's agent at the time he applied for insurance, that he would not be liable to any assessment; that he, the agent, would take his application upon "the annual interest plan," under which no assessments would be made. His testimony, and that of the agent, to this effect, was admitted in evidence against the objection of the plaintiff. The application was for insurance on the ordinary assessment plan. It was in writing, signed by the defendant and witnessed by the agent. It contains this distinct promise to pay assessments: "For value received, and in consideration of a policy of insurance to be issued by the Susquehanna Mutual Fire Insurance Company of Harrisburg, Pa., upon the approval of my application for insurance in said company of this date, I promise to pay the said company such sum or sums of money, and at such time or times, as the board of directors, of said company may, in conformity with the rules and by-laws, require, payable within thirty

days after notice." The insurance policy sent to and accepted by the defendant recited the giving of a premium note, and his agreement to pay assessments.

The defendant retained the policy without objection made to the company until October 14, 1878, which was about one month after a second assessment had been made. It is true he sent the policy to the agent in September or October, 1877, and informed him he ought not to pay any more assessments. The agent sent it to the company on October 14, 1878. On October 17 the defendant was notified by the company that they held the policy subject to his order, that they would not cancel it nor surrender his note.

The sending of the policy to the agent was not a surrender to the company. *Buckley v. Columbia Insurance Co.*, 2 Norris, 299. The agent testifies: "My authority was to receive applications and send them to the company." It is manifest, therefore, that the defendant retained his policy without objection made to the company from its reception in June, 1877, until October 14, 1878.

There is no room for the allegation that a fraud was practiced upon him, by reason of which he was induced to sign the application. The most that can be said is, that he wanted an insurance upon the "annual interest plan," and was told by the agent that his policy would be of that character. It appears that the company insured in three modes, viz.: 1. The assessment plan; 2. The annual interest plan; and 3. The deposit plan. Assuming all that is claimed by the defendant it does not amount to a defence. The application which he signed was as plain as language could make it, and called for the assessment plan. If he read the paper when he signed it, he must have known its character. If he signed the application without reading it, his act was inexcusably negligent. In such case there was the more necessity for reading his policy when he received it. Had he done either he would have seen that he was insured upon the assessment plan, and the mistake, if any, could, and doubtless would, have been corrected. But he retained it, as before stated, and did not notify the company for sixteen months. During all of this time he had the benefit of the insurance. In case of loss the company would have been liable. Not only so, other parties may have insured upon the faith of his liability to assessment upon his premium note. An instrument may be reformed in case of fraud, accident or mistake, but where the mistake was the result of the supine negligence of a party who sleeps upon his rights until other duties and

responsibilities have grown up, the law will not help him. We sustain the assignments of error.

Judgment reversed and *venire facias de novo*.

#### Legitimacy of Children born before Marriage.

In re Andros, *Andros v. Andros*, a decision of importance in reference to the rights of children born before marriage and legitimatised by the subsequent marriage of their parents was delivered. The question arose under the will of an English testator who bequeathed personal property to his "great-nephews, the sons of his deceased nephew, Thomas Godfrey Andros." Thomas Godfrey Andros was a native of Guernsey, by the law of which island children born out of wedlock become legitimatised by the subsequent marriage of their parents. The plaintiff was a son of Thomas Godfrey Andros, who was born before the marriage of his parents. Other children were born of the marriage, and the plaintiff claimed to share together with them in the property bequeathed by the will.

Kay, J., delivered an elaborate judgment, in which he examined all the authorities, and concluded by saying: This conflict of authority leaves me free to decide this case according to my own opinion, which is in favor of the plaintiff's claim. I observe that the testator describes the objects of his bounty not merely as the sons of his deceased nephew, but also as his own great-nephews; but that, in my opinion, makes no difference. The law of this country, by the comity of nations, recognises the plaintiff as legitimate, and therefore he is as much the lawful nephew of the testator, as he is the lawful son of T. G. Andros. The law, as I understand it, is that a bequest of personalty in an English will to the children of a foreigner means to his legitimate children, and that by international law, as recognised in this country, those children are legitimate, whose legitimacy is fixed by the law of the father's domicile. Thus, *ante nati*, whose father was domiciled in Guernsey, at their birth, and subsequently married their mother, so as to make the *ante nati* legitimate by the law of Guernsey, are recognised as legitimate by the law of this country, and can take under such a gift.—*Irish Law Times*.

#### NOTES OF RECENT DECISIONS.

(From the *American Law Review*, July-August, 1883.)

*Assignments: Exemptions; Waiver of.*—A. made an assignment for the benefit of creditors, reserving to himself the benefit of the

\$300 exemption. He never designated any specific property to be set aside to him, nor did he have any appraisement made. The assignee subsequently sold both real and personal property, the proceeds of which were distributed to holders of judgments against the assignor, some of which contained waivers of exemption. The assignor made no claim on these proceeds, and stated to various parties that he did not intend to claim his exemption. Three or four years afterwards the assignee realized a certain sum on building association stock belonging to the assignor, and just as he was about to file his account, said assignor claimed his exemption from said sum. *Held*, that under the circumstances of the case he was not entitled to set up such claim. [*Chilcoat's Appeal*, Sup. Ct. Pa., Pittsb. L. J., June 6, 1883.]

*Attorneys: Fees; Prospective benefits in determining value of services.*—It is not admissible in a suit for attorney's fees to go into inquiry concerning prospective benefits which might arise in the future to the client from a settlement effected by his attorneys in determining the value of their services. The "result" of a litigation may be shown, but the word "result" thus used means whether successful or otherwise, and not the ultimate benefits to the client; the inquiry is, not what benefits, immediate or remote, have accrued, but what is the general worth of the service rendered. [*Haish v. Payson*, Sup. Ct. Ill., Wis. Leg. N., June 7, 1883; Ch. Leg. N., May 26, 1883.]

*Banks and Banking: Assignment; Antedated check; Presentations.*—L. & Co. made an assignment for the benefit of creditors, September 26 1874. On September 29, 1874, L. & Co. gave their check to H. & S. and dated it back to September 22d. On September 29th the bank paid the check with knowledge of the assignment of L. & Co., but without knowledge that the check had been dated back. *Held*, in an action by the assignee of L. & Co. to recover moneys on deposit with the bank at the date of the assignment, the knowledge of the bank, that L. & Co. had made an assignment prior to the presentation of the check, put it upon inquiry as to whether or not the check had been given before the assignment. And such payment of the check would not be a defence for the bank. [*Chaffee, Assignee, v. First National Bank*, Sup. Ct. Com. Ohio. Ohio L. J., May 26, 1883.]

ALL things are not alike for all men fit.

## Land Department.

Furnished by SICKELS & RANDALL.

*Attorneys in Land and Mining Cases,*  
WASHINGTON, D. C.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., Aug. 7, 1883.

*The Comm'r of the General Land Office:*

SIR: In the Grand-Island-Nebraska Case, of John S. Degman v. Charles S. Kinney, involving the validity of the homestead entry of Degman, No. 8425, made February 20, 1879, upon the E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  Sec. 32, 18 W., 4 E, I affirm your decision in his favor, and direct that the entry be allowed to stand subject to full compliance with the requirements of the homestead law. The entry is erroneously decided in your decision as having been made under the timber culture laws.

Several hearings have been had and decisions made touching the claims of Kinney under various laws; his latest application being filed as a pre-emptor, after the successive cancellation of his homestead and timber culture claims.

I regard the equities as strongly in his favor, and if it were possible, should award him the land. But by his continually shifting claims, he has allowed Degman to obtain a legal preference, which must be regarded, notwithstanding the allegation that wrongful advice, both from his attorneys and the district officers, has operated to somewhat mislead him as to his real interests and rights. He has not shown such particular acts of misinformation on the part of the officials as will enable the Department to say wherein he was deprived of any essential right, and consequently no reason exists for setting aside the proceedings taken. The papers submitted with your letter of September 28, 1882, are herewith returned.

Very respectfully,

M. L. JOSLYN,  
*Acting Secretary.*

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

August 9, 1883.  
24666. Noah Walker & Co. v. George E. Phillips. Account, \$143.63. Pliffs attys, Carusi & Miller.  
24667. Geo. A. Armes v. Otis Bigelow et al. Bond, \$3,000. Pliffs atty, O. H. Armes.

August 10, 1883.  
24668. James B. Orusor v. Arthur B. Cropley. Certiorari. Defts atty, F. W. Jones.

August 11, 1883.  
24669. Martin & Bro. v. M. G. Copland et al. Account, \$457.67. Pliffs attys, Hine & Thomas.

24670. Alice Iams v. William Z. Edelin. Damages, \$6,000. Pliffs atty, John A. Moss.  
24671. Samuel Banks v. Wesley Hutchinson. Damages, \$10,000. Pliffs attys, Hewett & Shea.

August 12, 1883.

24672. Owen McGee v. James F. McGee. Note, \$350. Pliffs atty, F. T. Browning.

24673. Harrison, Havemeyer & Co. v. George O'Hare. Account, \$1,466.30. Pliffs attys, Hine & Thomas.

24674. Albigece H. Brown v. Bradley Barlow. Notes, \$24,110.45. Pliffs atty, John J. Weed.

24675. J. K. Bartlett v. Samuel R. Stratton. Notes, \$610. Pliffs atty, I. Williamson.

24676. Same v. Same et al. Note, \$321.11. Pliffs atty, same.

August 14, 1883.

24677. The United States v. Waldron Y. Selleck et al. Bond, \$5,000. Pliffs atty, Geo. B. Corkhill.

24678. R. M. Thompson v. Gilbert Moyer. Damages, \$5,000. Pliffs attys, Cook and Browning.

24679. Nitsch & Kuhn v. Elmer H. Bond. Account, \$113. Pliffs attys, Carusi & Miller.

August 15, 1883.

24680. James H. Marr, Administrator, v. Edward Kubel. Bonds, \$5,000. Pliffs atty, W. F. Bell. Defts atty, M. F. Morris.

24681. Sarah Otterback, Administratrix, v. John Stenzel. Account, \$140. Pliffs atty, P. B. Stillson.

24682. Samuel E. Arnold v. O. Schroth & Son. Damages, \$5,000. Pliffs attys, Birney & Birney.

24683. Thomas W. Smith v. The Israel African Methodist Church of Washington, D. C. Account, \$210.20. Pliffs attys, Hine and Thomas.

24684. Same v. Silas H. Moore. Account, \$448.48. Pliffs attys, same.

24685. Same v. Robert A. Balloch. Account, \$106.86. Pliffs attys, same.

24686. Mary McGraw et al. v. Charles Groff. Ejectment. Pliffs atty, W. F. Bell.

24687. Willie S. Hoge v. Charles Lippold et al. Notes, \$308.80. Pliffs atty, O. Y. Lee.

24688. Same v. Charles H. Kettler. Account, \$698.77. Pliffs atty, same.

August 16, 1883.

24689. Joseph M. Wheatley v. Henry Conradis. Certiorari. Defts atty, L. Tobriner.

24690. U. S. ex rel. James N. Lipscomb v. John J. Knox. Mandamus. Pliffs attys, Crittenden & Mackey, and T. J. Mackey.

### IN EQUITY.—New Suits.

August 11, 1883.

8672 Simon Joseph v. William Lewis et al. Creditors' bill. Com. sol., H. W. Garnett.

August 13, 1883.

8673. William M. King v. Edwin J. Sweet et al. To enjoin sale. Com. sol., C. H. Armes.

August 14, 1883.

8674 Rosa A. Martin et al. v. Gellie M. Lewis et al. Injunction and receiver. Com. sol., A. L. Meriman.

86675. Julius I. Atchison v. William Muirhead. Injunction. Com. sol., T. A. Lambert.

### PROBATE COURT.—Justice James.

July 31, 1883.

Will of Cornelius Hopkins; filed and fully proved and admitted to probate.

Copy of Will of Joel W. Jones; filed and recorded.

Estate of Robert Davidson; permission to sell at public or private sale.

Estate of Ann Phillips; appearance of attorney for one of the distributees.

Estate of Anthony Buchly; receipt filed.

August 1, 1883.

Estate of Thos. E. France; account of sales returned by administrator.

August 3, 1883.

Estate of Wm. Fessenden; proof of publication filed.

Estate of James Murt; amended petition filed.

Estate of Mary Palmer; citation returned; administrator appointed and bonded.

Estate of Dennis Dunn; administratrix appointed and bonded.

Estate of Charles Hillyer; same.

Estate of Robert Pywell; proof of publication filed; will admitted to probate and letters granted to executors.

Thos. E. Waggaman, guardian; appointment confirmed. Accounts passed:

Estate of Thos. E. France; first account.

Percival Padgett, guardian; fourth account.

Geo. W. Gresson, guardian; first account.

Estate of Bernard Berens; will filed; publication ordered.

Estate of William Aclain; will filed and renunciation of executrix.

AUGUST 6, 1883.

Estate of Mary Palmer; bond executed and letters issued.

AUGUST 7, 1883.

Estate of Hayward M. Hutchinson; sale of personal estate ordered.

Estate of Edward Voigt; will filed.

Estate of Catharine Ragan; petition for letters; publication ordered.

AUGUST 8, 1883.

Estate of Susanna V. Walker; assignment filed.

Estate of John Keithley; inventory returned; petition and order of sale.

Estate of Wm. N. Jeffers; will and codicil proved by two witnesses and admitted to probate and letters issued.

Estate of Margaret Cumberland; report of executor.

Estate of Mary Cumberland; account of executor.

AUGUST 9, 1883.

Estate of Robert Symell; executors bonded and qualified.

Estate of Wm. P. Buchley; list of debts filed.

AUGUST 11, 1883.

Estate of Elizabeth Miley; letters to husband granted.

Estate of Chas. M. Roberts; renunciation of widow and letters granted to petitioner.

Estate of James Murt; answer filed.

Estate of Caroline A. Ladde; citation to administratrix to render account.

Estate of Mary L. Talbot; order of sale of stocks and leave to assign notes.

In re Wilhelm Blumenberg, guardian; appointed.

Estate of John W. Morrell; letters granted to widow.

Estate of Daphne Hungerford; will fully proved and admitted to probate and letters granted.

Estate of Edward Voigt; will proved by two witnesses; letters granted and executor bonded.

Theresa Vogt, guardian; appointed and qualified.

Accounts passed:

Estate of Josephine C. Bacon; first account of executor.

Estate of Geo. Parle; second account of administrator.

AUGUST 16, 1883.

Copy of Will of Edwin D. Morgan; filed for record.

AUGUST 16, 1883.

William Ryan, guardian; accounts passed and order to settle debts.

Estate of Mary G. Harris; administrator appointed temporary who qualified.

Estate of James M. Peake; petition and assent of kin filed.

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JOHN H. KETCHUM ET AL.

No. 7,897. Equity.

THE PRESIDENT AND DIRECTORS  
OF GEORGETOWN COLLEGE ET AL.

Henry D. Cooke, Jr., and Charles A. Elliot, having reported a sale of lot No. 32, of Moses Kelly's sub-division of square No. 867, in the city of Washington, District of Columbia, for \$71.40, to Hermione M. Chappel, also lot No. 35, in same sub-division to Hermione M. Chappel, also lot No. 40, in same sub-division to John H. Ketchum, for \$181.60, also lot No. 41, same sub-division to John H. Ketchum, for \$160:

It is, this 30th day of July, A. D. 1883, ordered, that the said sales and each of them be and they are hereby confirmed unless cause to the contrary be shown on or before the 4th day of September, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said day.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 33-3 E. J. MEIGS, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Case, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

33-3

IDA L. CASE, Executrix.

### Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Pywell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1883.

EDWIN F. PYWELL,

A. M. PYWELL,

ROBERT T. PYWELL,

E. D. WRIGHT, Solicitor.

33-3

Executors.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary G. Harris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1883.

ROBT. J. CHEW,

HANNA & JOHNSTON, Solicitors.

33-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis Dunn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of August, 1883.

33-3

ANNIE DUNN.

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. August 17, 1883.

In the matter of the Estate of Mary Wilson, otherwise Mary Sayre.

Application for Letters of Administration on the estate of said Mary Wilson otherwise Mary Sayre, of the District of Columbia, has this day been made by Rebecca Hinton.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test;

H. J. RAMSDELL, Register of Wills.

A. C. RICHARDS, Solicitor.

33-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Coyne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of August, 1883.

B. F. RITTENHOUSE, Administrator c. t. a.

GORDON & GORDON, Solicitors.

33-3

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 7th day of August, 1883.

THE NATIONAL UNION INSURANCE CO.

v.

No. 8664. Eq. Dec. 23

JOHN B. TYLER ET AL.

On motion of the plaintiff, by Mr. A. S. Worthington, their solicitor, it is ordered that the defendants, Albert O. S. Reiley, Thomas B. Bryan, Margaret Heisel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

True copy.

Test: 33-3

E. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 7, 1883.**

In the matter of the Estate of Catharine Ragan.

Application for Letters of Administration on the estate of Catharine Ragan, of the District of Columbia, has this day been made by Richard F. Harvey.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **32-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. August 8, 1883.**

In the case of David Hagerty, Administrator of Frank Hagerty, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 14th day of September A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**FRED. W. JONES, Solicitor for Administrator. 32-3**

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

**EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL—In Equity, No. 8566, Docket 23.**

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 28th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$291.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 2d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 32, to secure the payment of \$400 to Robert E. Frey, as Treasurer of 12th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kingle, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**

A true copy. Test: **E. J. MEIGS, Clerk.**  
**26-6 By M. A. CLANCY, Asst. Clerk.**

*Legal Notices.*

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Philip Meredith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1883.

**ELIZABETH M. FULTON,**  
her  
mark. **Executrix.**

Witness: **GEO. E. JOHNSON.**  
**A. B. WILLIAMS, Solicitor.**

31-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**JAMES CORNELIUS ET AL.**

} **Eq. 7,919. Doc. 21.**

**JOSEPHINE DE VAUGHN ET AL.**

Upon consideration it is by the court this 30th day of July, 1883, ordered, that the sales reported this day by W. Wheeler and E. H. Thomas, trustees, to Sarah M. Evans, of property mentioned in said report and to James A. Hunt, of property mentioned in said report, be ratified and confirmed on the 1st Tuesday in September next, unless cause to the contrary be shown on or before said last mentioned day. Provided, a copy of this order be published once a week for each of three successive weeks on or before said day in the Washington Law Reporter, and provided, that a copy of said trustee's report and of this order be served within one week from this date on said James A. Hunt. And it is further ordered and decreed that said trustees pay all taxes and assessments, out of any money other than the money in their hands arising from said above reported sales, on property mentioned in this cause and heretofore sold by them, as far as the said money in their hands will go.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. **31-3 Test: R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Caroline O. Denham, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

**31-3 LEMUEL J. DENHAM.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 3, 1883.**

In the matter of the Will of Bernhard Berens.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of Bernhard Berens, of the District of Columbia, has this day been made by Magdalena Berens.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of August next, at 11 o'clock a. m., to show cause why probate of said will and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **31-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of July, 1883.**

**JOHN HUNTER JARDELLA**

} **No. 3592. Eq. Doc.**

**V. JOHN T. BULGER ET AL.**

On motion of the plaintiffs, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendants, John T. Bulger and Rev. W. T. Durham, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: **30-3 E. J. MEIGS, Clerk.**

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cornelius Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

THOMAS J. LUTTRELL, Executor.  
HINN & THOMAS, Solicitors. 31-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of July, 1883.**

MARY JOSEPHINE KEYES } No. 8656. Eq. Doc. 23.  
v.  
RICHARD THORNTON KEYES.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Richard Thornton Keyes, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 31-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES F. HALIDAY ET AL. } No. 934. Equity. Rule 5.  
v.  
THOMAS J. HALIDAY ET AL.

James S. Edwards, trustee herein, having reported a sale of original lot sixteen (16), in the square one hundred and four (104), in Washington City, in the District of Columbia, to John K. Francis, for \$1,840.40;

It is, this 30th day of July, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 4th day of September, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 31-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henrietta Dorsey Handy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of July, 1883.

LOUISA WILSON.  
E. D. F. BRADY, Solicitor. 30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. July 26, 1883.**

In the case of William A. Gordon, Administrator c. t. a. of Ella S. Dodge, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator c. t. a., will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 30-3 H J RAMSDALL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

SARAH M. STARR, Executrix.  
HAGNER & MADDOX, Solicitors. 29-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1883.**

ELIZABETH J. MERM and others } No. 8,671. Eq. Doc.  
v.

HENRY MARDEN and others.  
On motion of the plaintiffs, by Mr. R. P. Jackson, their solicitor, it is ordered that the defendants, Henry Marden, Thomas Marden, John M. Marden, Hannah M. King, Charlotte M. Winn, Albert M. Winn, Annie M. Moorman and Robert M. Moorman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 32-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Isabella Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of July, 1883.

FRANCES E. E. BROMWELL,  
ISABELLA HAGNER. 30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martha A. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 34th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 34th day of July, 1883.

30-3 JOB BARNARD, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Bennett Lee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

REBECAH W. LEE, Administratrix.  
A. C. RICHARDS, Solicitor. 30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of July, 1883.**

ELIZA A. OFFUTT } No. 8634. Eq. Doc., 23  
v.  
GEORGE A. BOHRER AND OTHERS.

On motion of the plaintiff, by Mr. R. P. Jackson, her solicitor, it is ordered that the defendants, John M. P. Clitz, Mary Clitz, Julius S. Bohrer, Lucinda Bohrer, E. Rush Bohrer and William H. Bohrer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 30-3 R. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1883.**

RUFUS A. MORRISON } No. 8650. Eq. Doc. 23.  
v.  
CATHERINE BOYLAND AND THE  
UNKNOWN HEIRS AT LAW OF  
MICHAEL DOYLE.

On motion of the plaintiff, by Mr. James H. Smith, his solicitor, it is ordered that the defendants, the unknown heirs at law of Michael Doyle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 30-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CHARLES WALTER, Executor.  
CHAS. A. WALTER, Solicitor. 29-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

AUGUSTA McBLAIR ET AL.  
Complainants  
v.  
THOS. E. WAGGAMAN ET AL.  
Defendants.

No. 8558. Eq. Doc. 23.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Sarah Ann Newton, Catharine Ann Munson, Miles O. Munson, Margaret M. Summers, Simon L. Summers, Amelia A. Harris, Marcellus W. Harris, Ella L. Stapp, Butler B. Stapp and William D. W. Newton, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 30-3 R. J. Maies, Clerk.

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS. W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

ALBERT HARPER.  
C. F. Rowz, Solicitor. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

DANIEL O'C. CALLAGHAN,  
Administrator, 435 7th street, n. w. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence B. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.

29-3 CHARLES E. OREBOY, Administrator.

*Legal Notices.***THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix.  
W. W. BOABMAN, Solicitor. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix.  
LEON TOBRINER, Solicitor. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Susan S. Marsh St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a.  
ROBERT CHRISTY, Solicitor. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jane E. W. Kelly, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a.  
JAMES H. SMITH, Solicitor. 29-3

**THIS IS TO GIVE NOTICE**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB,  
CHAS. J. LUSK,  
Administrators. 29-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 HENRY E. DAVIS, Administrator c. t. a.



# Washington Law Reporter

WASHINGTON - - - - - August 25, 1888.

GEORGE B. CORKHILL - - - EDITOR

## The Civil Rights Case.

We publish below in full the decision of Justice Mills, Acting Judge of the Police Court, in the case against James W. Bell, charged by Rev. George H. Smith, a colored man, with refusing him accommodations in his hotel or public dining room.

This decision has evoked much adverse criticism, but, strange to say, such criticism has been confined to the columns of Northern journals, the Southern newspapers being almost uniformly silent.

A careful reading of Judge Mills' decision will show: 1st. That as respects the scope and operation of the law (the Civil Rights Act), he holds that "private boarding houses, lodging houses, and coffee houses, are exempt, but that the keepers of public inns are clearly liable if they refuse to receive, for a reasonable compensation, all travellers against whom the common law objections to their reception cannot be urged;" and, 2d. That as Congress has exclusive legislative jurisdiction in the District of Columbia; there can be and is no conflict with State rights and local laws, and, therefore, the decisions rendered in the States are inapplicable, and, as precedents, should have little or no weight in controlling the decision of a court of the United States in the District when deciding similar questions, and governed in doing so by an express statute.

Section 1 of "An act entitled 'An act to protect all citizens in their civil and legal rights,'" approved March 1st, 1874, 18th Statutes at Large, reads as follows:

"That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, re-

gardless of any previous condition of servitude."

Section 2 provides the penalty, and is as follows, viz.:

"That any person who shall violate the foregoing section, by denying to any citizen, except for reasons applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall for such offence forfeit and pay the sum of \$500 to the person aggrieved thereby, to be recovered in an action of debt, with full costs, and shall also, for every such offence, be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred (\$500) dollars, or shall be imprisoned not less than thirty days nor more than one year."

The case before this court is novel, from the fact that it is the first attempt to enforce the penalty under the second section making a violation of the law a misdemeanor; it is novel also from the fact that it is pending in the Police Court of the District of Columbia, a United States court. See sections 1049 and 1050 Revised Statutes U. S., relating to the District of Columbia. It is novel as being the first effort to enforce the criminal provisions of the law in a territory where the Congress of the United States has exclusive and absolute legislative jurisdiction—section 8, article 1, Constitution U. S. By the passage of the Thirteenth Amendment to the Constitution slavery was abolished. By the Fourteenth Amendment the rights of citizenship were conferred upon *all persons* born in the United States, therefore those persons of color who had heretofore been held in slavery or involuntary servitude (except as a punishment for crime) by the Thirteenth and Fourteenth Amendments were vested, if born in the United States, with all the rights of citizenship. Congress having the authority to enforce, by appropriate legislation, &c. enacted what is commonly known as the Civil Rights Bill, heretofore mentioned, although Congress had previously passed a Civil Rights Bill—April 19, 1866. Under the Constitution, thus, we have, first, Congress has exclusive legislative jurisdiction in the District of Columbia; second, by the Thirteenth Amendment slavery was abolished in the United States, and power given to Congress to enforce the same by appropriate legislation; third, the Fourteenth Amendment, which confers citizenship upon all persons born in the United States; and, fourth, the Civil



Rights Bill, passed by Congress, approved March 1st, 1875, which provides, among other privileges, "the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, &c., subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude. The cause pending before this court is one involving the rights of a colored citizen to the advantages, facilities and privileges of an inn. What is an inn? Webster's definition of the word *inn*, "A house for the lodging and entertainment of travellers; a tavern, a public house, a hotel." The same authority defines hotel as "a house for entertaining strangers or travellers; a hotel or hostelry; an inn, a public house." Bouvier, in his Institutes, says under the common law an innkeeper is one who keeps an open house for the entertainment and lodging of all travellers and passengers who desire such entertainment; and, further, he is bound to take in and receive all travellers and wayfaring persons, and to entertain them for a reasonable compensation, unless he have no room, or the applicants are drunk or disorderly, or affected with contagious diseases; to supply their wants for a reasonable compensation. (*Howell v. Jackson*, 6 Carrington & Payne, 725; *Fell v. Knight*, 8 Meeson & Welby.) A private boarding house, lodging house or a coffee house, is not an inn, and cannot be compelled to entertain travellers, because they have not the same rights that the innkeeper enjoys. The *innkeeper* has a lien upon all the property of his guest, in the inn and its stables, under the common law, and in many of the States of the Union they enjoy special privileges, conferred by statute.

Therefore, under the common law, an innkeeper is bound to take in, and receive all travelers and wayfarers; and by the act of Congress approved March 1st, 1875, it is made a misdemeanor to discriminate against a traveller on account of race and color, regardless of any previous condition of servitude. By the counsel for the defendant, it is contended—1st. That the hotel keeper has a right to establish certain regulations as to hours for meals. This proposition must be conceded, for without an innkeeper could regulate the hours for meals in his house, he would be a mere cipher in his own house, and the guests would be the master. In regard to the second proposition, viz., "the right to designate certain places or seats for customers," this must also be conceded, with this limitation or qualification: that whatever discriminations are made, must be upon some

principle, or for some reason that the law recognizes as just and reasonable, and that no discrimination is made on account of color, race or previous condition of servitude, and that all of the guests shall possess equal privileges, and that the places so designated shall be accessible to all respectable persons at a uniform rate of charge. In regard to the third proposition of defendant, that an innkeeper is not responsible for the acts of his servants when they act in opposition to his orders. This proposition, as a rule, is correct, but there are exceptions. It has been held that where persons, for their own advantage, employ servants to conduct their works they must be answerable for what is done by those servants. *Rex v. Medley*, 6th Carrington and Payne, 292.

The cases cited, viz., *The State of Ohio, ex rel. William Gaines, v. John W. McCann*, and others, 21 Ohio State Reports, 198, was an application for a mandamus against the local school directors and teachers in a sub-district of a township, to admit the children of the plaintiff (a colored citizen of the State of Ohio) to the privileges of a specific school district. It was held by the court, (Day, J.,) that under the law of the State of Ohio, the classification of pupils on the basis of color was sanctioned, and it was held in *Van Camp v. The Board of Education of Logan*, (9 Ohio St., 406), that inasmuch as it is a law of classification and not of exclusion and colored children are not as of right entitled to admission in the common schools set apart for white children; but in speaking of section one of the Fourteenth Amendment, the learned judge says: "The language of the clause, however, taken in connection with other provisions of the amendment, and of the Constitution of which it forms a part, affords strong reasons for believing that it includes only such privileges as are derived from the United States." He says, if this construction be correct, the clause has no application to this case, for all the privileges of the school system of the State are derived from the constitution and laws of the State. The case of *Cory et al. v. Carter*, vol. 68, Indiana Reports, is upon the same general point, viz., the right of classification of the youth of the State, for school purposes upon any basis which does not exclude either class from equal school advantages, is no infringement of the equal rights of citizens secured by the constitution of the State. It is also held, that the system of common schools in the State of Indiana, had its origin in, and is provided for, by the constitution and laws of the State. It is purely a domestic institution, and subject to the exclusive control of

the authorities of the State. The federal Constitution does not provide for any general system of education to be conducted and controlled by the national Government, nor does it vest in Congress any power to exercise a general or special supervision over the States on the subject of education. These cases have been decided since the passage of the 14th Amendment. Also, the other case cited, 48 California; *May F. Ward, by A. J. Ward, her guardian ad litem, v. Noah F. Flood*, principal of the Broadway Grammar School, in the City and County of San Francisco, January, 1874. This case is upon the same point, viz., the right of the State to provide separate schools for white and colored children. This was like the Ohio case, an application for a mandamus, directing the superintendent to receive petitioner (a colored child) as a scholar in the school of which he was principal. The writ was denied.

The court held, that the law providing for the education of children of African descent in separate schools, to be *provided* at the public expense, the same as other public schools, is not in conflict with the constitution of the State of California, or in conflict with with the 13th and 14th Amendments to the Constitution of the United States. When such law exists, colored children may be excluded from schools established for white children, provided schools for colored children are established affording the same facilities for education; but if such schools for colored children are not established, they cannot be excluded from the schools kept for white children.

All of the foregoing cases are the decisions of State courts upon questions of domestic policy, and not cases in point.

The case of *The District v. Saville et al.*, 1 Mac Arthur, 581, was a case arising from an attempt to enforce the penalty in the act of the Legislative Assembly of the District of Columbia, entitled "An act to regulate shows and exhibitions in the sale and disposal of seats." Held to be a vexatious and unlawful interference with the rights of private property, and as such the Legislative Assembly was incompetent to pass it. (Olin, J.) This case is not analogous, for the reason that "the practice complained of, and against which the act is directed, does not conflict with any public or private right, and is not, therefore the rightful subject of legislation." There are many other cases in the books similar to the foregoing, but it is clear that they are all questions arising under the apparent conflict

of the National with the State laws. In a recent case in the Supreme Court of Kentucky—*Smoot v. Kentucky Central Railroad Company*—the plaintiff, a negro woman, having purchased a first-class railroad ticket, was denied admission to the ladies' car of the train, and on refusing accommodation in other coaches, and refusing her ticket, was removed from the train. She brought an action under the Civil Rights Bill of March 1st, 1875.

It was held on demurrer that Congress had no power to protect the rights alleged to have been violated, and the federal court had no jurisdiction to entertain the action. The point in this case was that the 14th and other Amendments were limitations upon the power of the State. If, therefore, the State has not attempted by its laws, officers or agencies, to overstep these limitations, no case arises for the exercise of the protecting and guaranteeing power of the national Government. Now, on the other hand, in the case of *Strauder v. West Virginia*, Supreme Court U. S., 100 Otto, the Fourteenth Amendment is held to be one of a series of Constitutional provisions having a common purpose, namely, to secure to the colored race all the civil rights that the superior race enjoy.

The case of the *Chicago and Northwestern Railway Company v. Anna Williams*, 55 Illinois, 185, was an action on the case brought in the court below by Anna Williams, a colored woman, who had been excluded from the privileges of the car upon the defendant's road, the only reason for such exclusion being on account of her color; she received a verdict for \$200, from which the company appealed. Judgment below affirmed. Also we find in the 28th Louisiana Annual Reports the case, No. 5419, of *Peter Jones v. David Bidwell*. In this case the plaintiff, a colored man, sued the defendant, the proprietor of a public theater, for \$5,000 damages for refusing him a seat in the theater after he had purchased a ticket. He recovered judgment. Upon appeal the judgment was reduced to \$300. The justice—Taliaferro—said, after a very careful perusal of all the evidence of record in this case, "I am well satisfied there has been, through the conduct of an agent of the defendant, a wanton violation of a right and privilege secured by the Constitution and laws of the State, as well as by the paramount law of the land" (meaning the act of Congress.)

"I am equally well satisfied that this violation of that right was perpetrated from no other consideration than that the plaintiff is a man of color, and that the personal indignity offered him proceeded solely from the

same cause. The violation of the plaintiff's legal right to enter, on the same conditions as other spectators enter, the place of public amusement managed by the defendant, renders the latter liable to damages to the plaintiff, for the act of the agent must be considered the act of the principal."

Congress has exclusive legislative jurisdiction in the District of Columbia, and there can, therefore, be no possible conflict *here* between the law of Congress and State laws. But even in the States it has been held, as already mentioned, that the act under which this trial is had governs. The case of *The United States v. Newcomb*, 11 Phila. Rep., 519, is one directly in point.

I have carefully analyzed the authorities bearing on this case, and find that, so far as the District of Columbia is concerned, the act of March 1st, 1875, must be sustained. The only question, therefore, for the court to determine is, whether or not, the case before the court has been made out. The prosecuting witness charges that he was denied the rights and privileges enjoyed by white people in the hotel of the defendant, and was ordered out of the establishment, on account of his color; that he protested against such discrimination, and asked the defendant if he was refused on account of his color. Defendant responded "the place to feed damned niggers is across the street;" and, at the same time, threatened him.

On the part of defendant it is in evidence that the proprietor entertained colored people in a separate room from white people. The defendant denied excluding the complaining witness on account of color, and claimed that the latter was disorderly, and further that the hour for furnishing meals had passed. The waiter who had refused the complainant, being called by the prosecution, in rebuttal, testified that colored people were fed in the *pantry*, which was *not* fitted up as a dining-room. These are the main points in the testimony.

The defendant admits being a licensed hotel keeper. That admission makes him responsible and subject to all the obligations and duties of an inn-keeper.

So long as a dining room of a hotel or restaurant is open, and a guest seated at the table being served, the same must be considered as open for the purposes of entertainment. And the innkeeper may not refuse to serve a guest who may apply, except for reasons other than those named in this law.

The authorities agree that any discrimination must be reasonable and *apply alike to all*. In the case before the court it appears that

the discrimination was *solely* on account of the color of the complainant, and therefore it comes directly within the provisions of the act of Congress, and the court is bound to hold the defendant guilty.

The penalty is severe, the lowest fine being \$500 or thirty days imprisonment. It is not for the court to question the wisdom of Congress in enacting the law or in fixing such a severe penalty, but, upon conviction of a defendant, it is its duty to impose it. The court, however, has the power to impose the lowest alternative penalty, and will therefore sentence the defendant to imprisonment in the jail for thirty days.

The case was appealed.

#### The Trial of O'Donnell.

THERE can be no doubt that O'Donnell may, if it be thought desirable, be tried for the murder of James Carey either at the Central Criminal Court or at an Assize Court in England or Ireland, or by Special Commission. Crimes committed on the high seas on board a British ship, are by the common law within the jurisdiction of the High Court of Admiralty, which, until the reign of Henry VIII, exercised this jurisdiction in accordance with the principles of the civil law. In order to assimilate that law, which requires the confession of the accused or "express testimony," with the common law of crimes, the jurisdiction of the Admiralty Court in these matters was, by 28 Henry VIII, c. 15, abolished, and a special commission authorised to be issued for the trial of this class of offence. When the Central Criminal Court was established in 1834, the admiralty judge was made a judge of the court, and jurisdiction given over crimes on the high seas. This jurisdiction was, in 1844, extended to the Commissioners of General Gaol Delivery, having jurisdiction in respect of the gaol, in which the accused was confined, or to which he had been committed. On the other hand, there is probably jurisdiction to try O'Donnell at Durban. The statute, 12 and 13 Vict., c. 96, "An act to provide for the prosecution and trial in Her Majesty's colonies of offences committed within the jurisdiction of the Admiralty," gives power to the local courts to try for offences committed in British ships on the high seas, persons "brought for trial to any colony." Natal became British territory, some six years before this act was passed, and was made a separate colony seven years afterwards; but the fact that it was British territory, at the time of the passing of the act, seems sufficient to make the act applicable.—*Irish Law Times*.

# Supreme Court District of Columbia

## GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

CAROLINE NELSON

vs.

CHARLES E. HENRY ET AL.

Equity. No. 7968.

{ Justices COX and JAMES sitting.  
{ Decided March 20, 1883.

1. A deed of bargain and sale of real estate not recorded within six months from its date, and containing no trust expressed upon its face, is void against creditors whose judgments were obtained prior to its record, although subsequent to the date of the deed.
2. While it is true that a judgment creditor does not levy upon any other or better title than that which the debtor has, and that he takes it subject to all outstanding equities, yet the Statute of Frauds has made it necessary that any trust attaching to property in the hands of an ostensible owner shall be expressed in writing.
3. The rule established by the Statute of Frauds and the registry laws, is, that the creditor is entitled to pursue the ostensible title even though it may not be the real title of the debtor.

### STATEMENT OF THE CASE.

Appeal from a decree of the Special Term. Daniel Nelson, being seized and possessed of lot 29, in a subdivision of square 893, in the District of Columbia, conveyed the same on the 25th day of May, 1877, by a deed duly recorded and absolute on its face, to A. A. Marr, the intention being to vest the title in Nelson's wife, Caroline, by a deed to be subsequently made to her by Marr. In pursuance of this intention, Marr, on the 6th of June, 1877, executed to her a fee-simple deed of the property, but did not place it upon record until the 2d day of August, 1881. In the meantime a judgment was obtained on the 6th of April, 1881, by Ringwalt & Hack against Marr, and on the 30th of August, 1881, a *fiery facias* was issued thereon, and a levy made by the United States Marshall, Charles S. Henry, upon the property described. Whereupon, Caroline Nelson filed this bill, setting forth the above facts, and claiming the property as her separate estate, and alleging that no title existed in Marr, the conveyance having been made to him as trustee for the purpose of conveying the property to plaintiff. The bill concluded with a prayer that the judgment be declared no lien upon the property, and that the defendants be perpetually enjoined from selling the same, and for general relief.

The answer of the defendants, Ringwalt & Hack, denied that the property was the sepa-

rate estate of plaintiff; admitted the execution of the deed from Nelson to Marr, but denied that he held the same as trustee for the purpose of making a conveyance to plaintiff, or for any other purpose than that expressed upon the face of the deed itself. They averred that said declaration of trust was not in writing, and claimed the benefit of the Statute of Frauds; that the indebtedness represented by said judgment was contracted by Marr after said conveyance to him, and while the records showed that he was the legal owner thereof, and on the faith of such ownership, unusual forbearance and indulgence was granted him by defendants touching said indebtedness, both before and after said suit at law was begun, and even after said judgment was obtained; that they incurred great expense in bringing said suit at law, and in marshal's fees, advertising, etc., which they would not have done had they received notice that said Marr had no interest in said property.

The answer of the defendant Marr admitted the substantial allegations of the bill. The defendant, Henry, disclaimed any knowledge of the material parts thereof, and neither denied or admitted the same; he admitted that he held the office of marshal, and that he levied on said real estate by virtue of said *fi. fa.*, and caused the same to be advertised for sale.

The facts as stated by the bill were substantially proved by the evidence; and on the hearing the court below passed a decree enjoining the defendants as prayed, and declaring the judgment no lien upon the property. From this decree defendants appealed.

T. F. MILLER and CHARLES PELHAM for complainant.

C. M. MATTHEWS and E. A. NEWMAN for defendants.

The trust attempted to be established in this cause is an express trust, and not a "trust or confidence" contemplated by section 8 of the Statute of Frauds.

As to what are resulting trusts see *Browne* on Statute of Frauds, secs. 80 and 84; *Parker's Heirs v. Bodeley*, 4 Bibb, 102; *Osterman v. Baldwin*, 6 Wall., 123.

Being an express trust, under the Statute of Frauds, it must "be manifested or proved by some writing signed by the party who is by law enabled to declare such trusts." Statute of Frauds, sec. 7.

Assuming, for the sake of argument, that the trust alleged in the bill could be proved by parol, the testimony in this cause is insufficient to warrant the court in passing a de-

cree, the well-settled principle being, that where the defendant in express terms negatives the allegations in the bill, and the evidence is that of only one person affirming what has been so negatived, the court will not make a decree. 1 Dan'l Ch. P., 843, note (7); Morrison v. Shuster, 1 Mackey, 190.

The complainant has no separate estate in said real estate, having, according to her bill, acquired the same during her marriage by gift and conveyance from her husband. She can, therefore, maintain no suit in reference thereto. Revised Statutes (D. C.), secs. 727-8-9.

The judgment rendered April 6th, 1881, is a prior lien to the deed from Marr to Nelson, dated June 6, 1877, and recorded August 2, 1881. Revised Statutes (D. C.), secs. 446 and 447; Act of Congress, April 29, 1878, Statutes at Large, vol. 20, p. 39; Hill v. Paul, 8 Mo., 482; Reed v. Austin Heirs, 9 Mo., 722; Knell v. Building Association, 34 Md., 71; Helm v. Logan, 4 Bibb, 78; Sicard v. Davis, 6 Peters, 124; Freeman v. Douglass, No. 6071, Eq. Doc. 18.

Without multiplying authorities, we assert that in the following States the principle has been adopted that a deed or mortgage, though valid without record, as between the parties and their heirs, is not valid as against even the process of the grantor's creditors without notice, except from the time of recording, viz., Ohio, Massachusetts, New Hampshire, Vermont, Rhode Island, Minnesota, California, Colorado, Kansas, Arkansas, Kentucky, Tennessee, Louisiana, Texas, Florida, North Carolina, Virginia and West Virginia.

In all other States where a different doctrine prevails, the statutes do not protect a judgment creditor of the grantor from the effect of a prior unrecorded deed or mortgage as the statute in this District does.

Mr. Justice Cox delivered the opinion of the court.

In this case we are constrained, with no little reluctance, to reverse the decision below and award the decree in favor of the judgment creditor. We feel reluctance in doing this because the case is a very hard one. A man named Nelson, represented as a poor and ignorant man, conveyed certain property to a third party, with the understanding that it should be reconveyed to his (Nelson's) wife. The deed from Nelson was put on record, but the deed to his wife, was not recorded for over three years after its date. In the meantime, certain parties obtained judgment as creditors against the grantee, and levied on the same property, and this bill was filed by

Mrs. Nelson, to restrain action on that judgment. Under the law in regard to registration, as it has been held by the Supreme Court of the United States, and by a number of other courts, we are satisfied that this deed back to Mrs. Nelson, must be treated, as regards the judgment creditor, as if it had no existence; it has no operation as against such creditor, except from the time it was actually recorded. If it had been recorded within six months, it would have operated from its date; but it was not recorded for over three years, and therefore, as against a judgment creditor, it is simply void, and the property must be regarded as if it had remained in the trustee, and was his property. It is true that the judgment creditor does not levy upon any other, or better title, than that which the debtor has, and that he takes it subject to all outstanding equities; but the statute of frauds has made it necessary that any trust, attaching to property in the hands of an ostensible owner, shall be expressed in writing. We have sought to find, in the deed back to Mrs. Nelson, evidence of a trust for her benefit, but we have been unable to find it. It purports to be simply a transaction of bargain and sale for a money consideration; if that be evidence of a trust, then in all such cases, where deeds have been held void as against creditors, they ought to have been held to contain evidence of a trust; which has not been the case. This deed is no evidence of anything beyond what it purports on its face to be; and taking the Statute of Frauds and the registry laws together, the rule which they establish, is that the creditor is entitled to pursue the ostensible title, even though it may not be the real title, of the debtor. The case is a hard one but at the same time, it is no harder than if the trustee had sold the property to a third party for value, without notice; in which case there is no question, that the equity of the purchaser would prevail over that of the *cestui que trust*. The decree is set aside, and the bill dismissed.

[NOTE.—A motion having been made for leave to reargue, this cause was, on June 27, 1883, overruled: three justices sitting.]

A WITNESS had arrested a man who had stolen a suit of clothes from him, and the prisoner had the clothes on when arrested. The witness, without a warrant, transported the prisoner twenty miles away. "Did you carry this man off without a warrant?" said the indignant attorney. "Well, I took my own clothes and carried them away, and he was in 'em," was the calm reply.

**Supreme Court of Alabama.**

Under an indictment for assault and battery "with a weapon, to wit, a gun," a conviction cannot be had on proof of an assault and battery without a weapon.

Indictment for an assault and battery "with a weapon, to wit, a gun," and conviction upon proof of an assault and battery with the hand or fist.

SOMERVILLE, J., in delivering the opinion of the court said: The rule is, that the mode of committing an offence must generally be proved as laid in the indictment, at least in substance. (Roscoe on Cr. Ev., 89, 90.) This principle embraces the instrument through the agency of which the crime is perpetrated. The evidence must show it to be of the same substantial nature with the description given. Precise conformity in every particular is never demanded, but it must be shown to correspond in general character and operation with the averments of the indictment. Such matter of description, even though alleged with unnecessary particularity, often becomes essential to the fact of identity. (Wharton on Cr. Ev. (8th ed.), §§ 91, 92; 1 Greenleaf on Ev., § 65.) It is clear that if an indictment charges an assault and battery with a weapon, as is the case here, and the evidence shows that the offence was committed without a weapon, as with the hand or fist, there is a fatal variance. The charge of the court was erroneous in refusing to recognize this principle. (Johnson v. State, 35 Ala., 363; 1 Bishop on Cr. Proc., §§ 485, 486; Rodgers' Case, 50 Ala., 102; 1 East P. C., 341; Filkins v. People, 69 N. Y., 101; Wharton on Cr. Ev., §§ 91, 92; 1 Greenleaf on Ev., § 65.) Reversed and remanded.

**Changing Names.**

A reporter of the *New York Evening Post* has been rummaging the court records of that city to find why people change their names. Among the interesting cases discovered were the following: Simon Rubenstein, of this city, obtained leave to be known as Simon Stein, because of the disgrace brought upon his old name by the man who was convicted of murdering a pretty Jewess a few years ago. Simon is a peddler, who drives a profitable trade in the outlying villages. He complained that people harassed him by asking if he was a relative of the murderer. When he said he was not, they refused to believe him, and turned away from him without buying. He believed he would be benefited pecuniarily by becoming Mr. Stein, and the court granted his harmless request. The case of Simon Schwartz, who has become Simon Black,

was placed on a philological basis. The applicant for a change alleged truthfully that Schwartz was a difficult name to spell and to pronounce in this country. Translated into English it meant "blacker." As he had changed his allegiance, he saw no reason why his name might not be changed to Black, the only curtailment being the cutting off of the English ultimate, which would not, if retained, be a correct guide to his occupation. Emil Lashansky represented to the court that his name was so difficult to spell and pronounce that he rarely recognized it himself when the attempt was made by Americans to spell or pronounce it. The court saw the point and permitted him to be known as Emil L. Lambert.

Kavy Monsky told a pathetic story to the court. He is a peddler. When he goes with his cart into the neighboring villages, bad boys, seeing his name on it, call him "Mr. Monkey," to his great personal annoyance and to the detriment of his business. He is sensitive to such ridicule, the more so because after the boys have called him "Mr. Monkey," it is difficult for him to restore the dignified bearing he ought to observe while making bargains with the villagers. In Russia and Poland, he informed the court, his name was of so frequent occurrence as never to give rise to ridicule. He was, besides, thinking about getting married, and he was apprehensive lest his name would interfere with that project, as it did with his business. It would, furthermore, be easier to get a new name for himself before marrying than for two after he had a wife to provide for. He was permitted to depart as Mr. Kavy Rosansky. David Feigenbaum became David Welch, because people had made fun of the former name. Welch was selected to ward off derision because that was the applicant's mother's maiden name. Otto F. Siebenhuhner found that he suffered in his business because, as he alleged, people could not pronounce his name so that he could understand it, nor was it ever correctly spelled except by the greatest care. Being a hotel-keeper, he desired to have some familiar name, so he asked the court to make him Otto F. Groebisch. The improvement may not be acknowledged by this host's American customers. Lewis Levy came to this country some years ago in a despondent mood. Thinking there might be luck in a name, he called himself William Lewis. He prospered somewhat, but when he came to marry he used his proper name, but afterward people still called him William Lewis. His wife seems not to have been satisfied. She wanted to know whether she

was Mrs. Levy or Mrs. Lewis, telling her husband that until this matter was settled she felt as if she was sailing under false colors. Application was therefore made to the court for a legal right to establish the house of Lewis on the old Levy foundation. The application covered the case of the wife and four children.

Johan George Teifel, his wife and two children, became a family of Feltners in October last. The reason for so sweeping a change was stated by the head of the household to be the undesirable meaning of Teifel, which is, when translated, "Devil." He said that he and his children were often annoyed by "the badinage and teasing of high-minded persons on account of the significance of the family name." The court graciously exorcised the evil one from that household.

Percy Talbot Wiggins, in November last, made up his mind to have a change of name, the reasons being more explicit than substantial. He alleged in court, first, that Wiggins was distasteful to him; second, that he believed the name was detrimental to him in his business; third, that his interest would be substantially benefited and promoted by the change; fourth, that he had no father or mother, or guardian, but that he entered upon the project of changing his name of his own free will and wish. The court consented that he should thereafter be Mr. Percy Wiggins Talbot, if that pleased him better.

Here is an interesting case of religious intolerance: Edward Morgenstern, applying for the name Edward Stern Morgan, places on record his aversion to the religion of the Hebrews. Though born a Jew, he says he has, since he arrived at years of discretion, wholly repudiated the Jewish faith, is not a believer in the creeds of that race, and has never associated with them. He was, at the time the application for a change of name was made, about to engage in business, which would depend largely for success on the good opinion and the custom of his Christian friends and associates. If he were known to be a Jew his business would, he believed, be greatly impeded. "The name of Morgenstern," he affirms, "having been for many years connected with Jews, Jewish beliefs and customs, it is difficult for him to separate himself among people, and that certain actions on the part of his family, because he refused to adhere to the Jewish faith, had brought disgrace on the name of Morgenstern, making it additionally burdensome and obnoxious to him." The right to become Mr. Morgan was granted.

#### **The Married Women's Property Act, 1882.**

A case which will be of far-reaching importance under the Married Women's Property Act was decided by Mr. Justice Chitty last week. A husband had left his wife, and was, it was stated, in occupation of a separate establishment, but he occasionally returned to the house in which his wife was living, and on leaving took with him any article on which he could lay his hands. The house had been comprised in the marriage settlement, and was settled upon trust for sale with consent of both husband and wife, while the house itself until sale—and, when sold, the proceeds of sale—were to be for the separate use of the wife, without power of anticipation. Acting on the precedents of *Green v. Green* (5 Hare, 400) and *Allen v. Walker* (L. Rep., 5 Ex., 187) Mr. Justice Chitty, on the application of the wife, made an order restraining the husband from going to the house. It was urged that this was in effect to grant a judicial separation, which could only be done in the Divorce Court; but the learned judge pointed out that it was only granting the wife that protection for her property to which she was as much entitled against her husband as against a stranger, and if the husband was aggrieved he could provide another house for his wife, and if she refused to live there could sue for the restitution of conjugal rights. As in such a case he could scarcely be successful, it is obvious that under the new act, by which all a married woman's property is henceforth settled to her separate use, the power of the wife is likely to be materially extended, not only over her property, but also over her person.

In *Thompson v. Krise*, decided on the 19th July, some very important remarks were made by Mr. Justice Lopes with respect to the Married Women's Property Act, 1882. The action was brought by the plaintiff against a husband and wife for goods sold. The action was commenced last year, but judgment was not delivered until April last, and it was now sought to charge the wife's separate estate, although she had never been served. The court very reasonably held this could not be done, notwithstanding Judicature Order IX., r. 3; and Mr. Justice Lopes said "he had always held that by the Married Women's Property Act married women had been metamorphosed into spinsters. The effect of that act was to place the wife, with respect to her separate property, in the position of a *feme sole*, and she was entitled to separate service before that property could be charged." Mr. Justice Williams concurred. No doubt the decision is correct but are the dicta to be

literally construed, and to what are they intended to extend? Messrs. Wolstenholme and Turner, in the third edition of their work on the Conveyancing Act, express an opinion that, in cases falling within the Married Women's Property Act of 1882, the husband will no longer on the decease of his wife intestate be entitled to "curtesy" or to her personal property undisposed of. It must, however, be remembered that this was not the case with respect to a married woman's separate estate before the act of 1882, whether the separate estate was equitable, or under the early Married Women's Property Act, and that the act of 1882 nowhere expressly takes these rights from the husband. Nor does it anywhere say she shall be as a *feme sole* with respect to her separate property. If she were so literally, she would have no husband (as regards property), but then, too, she could have no children (as regards property), and the act would deprive her children of the right to inherit either realty or personalty. Of course this is not so, and we think that, until actual decision it is quite unsafe to conclude that the husband has so lost his rights. It could hardly have been in the contemplation of the legislature to leave to a wife her rights in her husband's real and personal estate on his decease intestate, and to deprive him of his share in his wife's estate under like circumstances.—*London Law Times*.

#### Attorney's Fees.

In *Haish v. Payson*, (Sup. Ct. Ill., May 10, 1888; 17 Cent. L. Jour., 10), on the question of the value of attorney's services, the court is said to have held, that it is not admissible in a suit for attorney's fees, to go into an inquiry concerning prospective benefits, which might arise in the future, to the client from a settlement effected by his attorneys.

The doctrine of the judge writing the opinion seems to be, that the rule allowing the "result" of a litigation to be shown means that evidence may be given, as to whether it was successful or otherwise, and not as to the ultimate benefits to the clients. The inquiry is not what benefits, immediate or remote, have been derived from the legal services, but what is the general worth of the services rendered. We doubt whether the case is authority for this construction of the rule. If it be, it applies a narrower rule to the services of attorneys than if applied to other classes of highly valuable services.

There is no technicality of rule in *quantum meruit*; it simply means, "as much as he deserves," or "as much as it is worth." The value of the result attained by the services is

always an element in estimating the value of the services where market price cannot afford a guide. It is not, of course, the only element, but it cannot be ignored any more in the case of an attorney's service than in the case of salvage services.

The decision we have cited was probably a right one, in the particular case considering the manner in which the case was presented, and the objections received, and the hypothetical questions allowed.

The plaintiff was permitted to put what was called a hypothetical question, in which, after a statement three pages long, alleging the services rendered without any appearance of hypothesis, a question referring to "this supposed state of facts" drew out the opinion that the client would, in the future, profit over a million dollars from the services rendered.

This was rightly deemed error.

#### Notes on Negligence.

A decision of some importance in negligence cases is that of *McGinnis v. Canada Southern Bridge Co.* (October 31, 1882, 13 Northwestern Rep., 819), rendered by Judge Cooley, in an action brought by a young man under age, employed as switchman in defendant's yard, and whose foot was caught in a frog, holding him until a train ran over it.

The main ground on which recovery was sought was that there is a simple device by fitting into the frog a piece of wood, which is well known, and is a protection against such accidents; and that this device was at the time in use in Canada, and to some extent in the United States. Upon this evidence he claimed the right to go to the jury on the question whether it was negligence in the employer not to use such a device; but the circuit judge held the contrary and directed a verdict for defendant. This conclusion the appellate court approved, on the ground that he who seeks, at least in a case between master and servant, to show that the adoption of a known device might have prevented the injury, must show, also that its adoption would not introduce other dangers counterbalancing its advantages. The court say: "In this case the evidence falls short in making a *prima facie* case that it would be desirable to adopt the device of blocking the frogs. There was evidence which tended to show that this device was calculated to prevent such accidents as the plaintiff had met with, and that to some extent it had been brought into use for that purpose. The plaintiff's evidence showed, however, that the use had not gone very far, and that nearly all the railroad companies of



the country had failed to adopt it. As railroad service is in the hands of experts, and the managers are greatly interested in protecting their men against injury, this failure on their part to adopt and use so simple a device is a very pregnant fact, and suggests that there must be reasons for it that are controlling. But as this case was disposed of on the plaintiff's own showing, and without calling upon the defense for their reasons, we cannot judicially know what they are, nor could the court below act upon them. But the court below could not fail to observe that the plaintiff made no attempt to prove that the device of blocking the frog was a desirable device to adopt in the management of railroads. He did offer evidence that it tended to diminish or prevent a particular danger; but he did not go further. It is consistent with all that was shown by him that the adoption of this device would introduce new dangers, more serious than those it would guard against, and that for this reason it was neither prudent nor humane to adopt it. And the plaintiff had no right to ask the court and jury to regard a single consequence of the adoption of the device, and to condemn the management of the railroad company on so narrow a view of its conduct, but it was his business to show that on a survey of the whole field the use of the block was prudent, and that it guarded against dangers in one direction without the introduction of perils in another. Without that showing it seems very manifest that, as the evidence stood, there was no case made for the adoption of the proposed device. Railroading is at least a business with many dangers, and scarcely any machine, implement or expedient made use of in it but is liable at some times and under some circumstances to imperil human lives. Suppose the block had been made use of and an accident had occurred which was thought to be attributable to it; how, on the plaintiff's theory, would the defendant have excused itself for adopting it?"

In *Tillett v. Ward*, (47 Law Times, R., N. S., 546) it was held, by the Queen's Bench Division of the English court (January, 1885), that the owner of property adjacent to a highway in a town takes upon himself the risk of inevitable danger consequent upon the driving of cattle along the highway.

In this case an ox belonging to the defendant, whilst being driven along a street in a town, suddenly broke away and rushed through the open doorway of the plaintiff's shop and there did damage. It not having been proved that the animal escaped through any negligence or want of skill on the part of

the drover. *Held*, that the defendant was not liable.

In *Olson v. Paul* (Wisc., October 3, 1882; 13 Northwestern Rep., 868) the court applied the rule that one who trusts a work to an independent contractor is not liable for injury caused by negligence in the conduct of it to the case of an obstruction in a navigable stream caused by defendant's logs, which defendant had entrusted to a third person, under a contract by the latter to drive them down the stream, cut them into lumber and deliver it ready for market. In such case, if the owner of the logs does not in any way interfere with the contractor or his servants in the control or management of them, he is not liable for resulting obstructions.

The question of burden of proof in cases of contributory negligence, is discussed on general principles in a short article in 17 Weekly Jurist, 110, urging the argument that plaintiff should not be required to prove his freedom from negligence because it is a negative.

An article on the contributory negligence of infants, in the current volume of the Central Law Journal, (16 Cent. L. J., 428), collects a number of cases on this subject; but the author seems to leave the subject in something of the same uncertainty in which he opens it, which seems chiefly owing to disregard of the plain and practical distinction which compilers and treatise writers often overlook, but which practicing lawyers well understand, viz., the difference of principle involved in cases where the infant or the personal representative of a deceased infant sues, and cases where the parent sues for loss of service, &c.—*N. Y. Daily Register*.

ACCORDING to the American Newspaper Catalogue of Edwin Alden & Bro., Cincinnati, Ohio, just published, containing over 800 pages, the total number of newspapers and magazines published in the United States and Canadas is 13,186 (showing an increase over last year of 1,028). Total in the United States, 12,179; Canadas, 1,007. Published as follows: Dailies, 1,227; tri-weeklies, 71; semi-weeklies, 151; weeklies, 9,955; bi-weeklies, 23; semi-monthlies, 237; monthlies, 1,324; bi-monthlies, 12.

JUDGE: "Now, sir, do you understand the nature of an oath?"

WITNESS: "Well, my Lord, I think I ought to, as I have been twice convicted of perjury."—*Irish Law Times*.

MR. GILBERT, the actor, a short time since, was standing at the gate of his house with his hat off. He had in fact seen some ladies to their carriage; they had driven off, and he remained standing on the sidewalk, enjoying the cool of the evening. Out of a neighboring house where he had been dining, stepped a gentleman, who, after walking a few paces, became aware of Mr. Gilbert, whom he mistook for the butler of the establishment. Addressing him at once, with an air of polite superiority, he said: "Will you call me a Hansom cab?" "Certainly," replied Mr. Gilbert, "you are a Hansom cab." This odd bit of fun reminds us of poor Frank Talfourd's famous reply to the man who, seeing him on a bitter night without a wrap, said: "Why, Talfourd, you never wear an overcoat?" "No," replied Talfourd, "I never was."

#### NOTES OF RECENT DECISIONS.

(From The American Law Record.)

**Action: By Stockholder Against Bank Officer for Mismanagement.**—An action will not lie by a stockholder in a National Bank against the President and Directors for their neglect and mismanagement of the bank, whereby insolvency ensued and the stock became worthless. [Conway v. Halsey. Sup. Ct. of New Jersey, November, 1882.]

**Administration: Assets; Death by Wrongful Act.**—The statutory right of action for death by wrongful act is not an "asset" of the estate of the deceased. Therefore, if it is essential to the grant of letters testamentary that the deceased should either have been a resident of the county, or should have had assets therein, the grant of letters upon the estate of a non-resident who had no other assets in the county, is void. [Perry v. St. Joseph, Etc., Railroad Company. Supreme Court of Kansas.]

**Contract: Substitution of Material; Custom.**—A, a cabinet maker, agreed in writing to build for B a walnut counter. B found that the top and door-panels were whitewood stained to look like walnut.

**Held,** In an action by B for damages, that A could not show a custom that whitewood was so used by manufacturers in making walnut counters. [Greenstine v. Borchard. Supreme Court of Michigan.]

**Compensation of Attorney for Settlement of Criminal Offense.**—The court will not enforce a contract by which an attorney-at-law undertakes for a contingent fee to procure a settle-

ment of a charge of fornication with a married woman. [Ormerod v. Dearman. Supreme Court of Pennsylvania.]

**Criminal Law: Larceny; Felonious Taking.**—To constitute a larceny there must be a felonious taking of the property. When property which lawfully in the custody of an employe or bailee is criminally appropriated to the use of such employe or bailee, the offense may be embezzlement, but it can not be larceny. [State v. Wingo. Supreme Court of Indiana, June 30, 1883.]

**Larceny; Hiring Horse.**—When a horse is delivered on hire or loan, and such delivery is obtained *bona fide*, no subsequent wrongful conversion, pending the contract, will amount to larceny. [Hill v. The State. Supreme Court of Wisconsin, April, 1883.]

**Mortgage: attorney fee; contract for, under power of court; must be reasonable.**—1. A stipulation in a mortgage that if suit is brought to enforce it, the mortgagor will pay the mortgagee a reasonable attorney fee for conducting such suit, is valid and will be enforced by the court.

2. A mortgage for \$30,000 in round numbers contained a stipulation that to save the mortgagee "harmless," in case he was compelled to bring suit to enforce the mortgage, the mortgagor would pay him an attorney fee of ten per centum on the amount due thereon.

**Held:** 1. That the real purpose of the stipulation was to secure the mortgagee in the repayment of a reasonable attorney fee in enforcing the mortgage by legal proceedings, not exceeding ten per centum of the amount due thereon.

2. That the amount of such fee depends upon the labor and responsibility involved in the suit; and if the amount fixed in the stipulation, due regard being had to the nature of the service, is exorbitant, the court will not enforce it, only so far as, under the circumstances, may appear reasonable.

3. That no defense being made to said suit, the sum of \$500 is a sufficient attorney fee for conducting the same. [Walter J. Burns v. W. G. Scoggin et ux. U. S. Circuit Court, District of Oregon. June 20, 1883.]

**Criminal Law: Attempt to Suborn Perjury.**—"Attempting to suborn perjury," is not the generic name of any class of offences; and the information giving this appellation, and not stating facts necessarily constituting a crime, *held* demurrable. [People v. Thomas, Sup. Ct. of California, June 7, 1883.]

**Landlord and Tenant.**—The tenant, and not the landlord, is liable for nuisances originating and kept up during the tenant's exclusive occupancy, unless the landlord is shown to be responsible for repairs. So, held, where the nuisance consisted in overflowing a neighbor's cellar, by means of leaky and defective supply and waste pipes. [Harris v. Cohen, Sup. Ct. of Michigan, April 18, 1883.]

**Railroad: Ticket; Contract.**—The ticket given to a railroad passenger, upon payment of his fare, is a receipt merely, and not a contract.

**Ibid: Ibid; duty of passenger.**—A railroad passenger, having a ticket to a certain destination, cannot demand to be taken there in order to alight, if the train, by the rules of the company, does not go to, or stop at such station. It is the duty of the passenger to ascertain what train will stop at his destination. [Logan v. Hannibal and St. J. R. R. Co., Sup. Ct. of Missouri.]

**Lodging-house keeper: when not an inn-keeper.**—A person who keeps a lodging-house, in which no provision is made by him for supplying lodgers with meals, is not an inn-keeper. The fact that there was a restaurant kept by another person in the basement of the house, between which and the upper part of the building, there was a doorway to facilitate access from the lodging rooms to the restaurant, did not make the keeper of the lodging rooms an inn-keeper, and he had therefore, no lien upon the baggage, furniture or effects of the person to whom he lent the rooms. [Cochrane v. Schryber, N. Y. City Common Pleas, Gen. Term, July 20, 1883.]

**Incompatible Business.**—The disturbance of a lawyer's office by incompatible business carried on in the same building, gave rise to an unsuccessful defense in Boreel v. Lawton (90 N. Y., 293), where defendant sought relief against the noise occasioned by breaking ceiling and the like, resulting from a printing office overhead, by refusing to pay rent, and setting up a claim for damages by such disturbance of his business when sued for the rent. His answer alleged, that on divers occasions, he was obliged to leave his rooms by reason of the disturbance, but did not aver any abandonment of possession or actual eviction.

The court held, that to sustain a counter claim there must have been an actual or constructive eviction, and that without that the wrongs, if they gave him a cause of action, were not a breach of the lease, and therefore, in the words of the Code, did not "arise out of the same transaction," as plaintiff's complain.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

- AUGUST 20, 1883.  
24691. Elias Traversy v. Bright & Humphries. Certiorari. Piffs atty, R. P. Jackson. Defts atty, W. T. Bailer.
- AUGUST 21, 1883.  
24692. J. H. Stillman & Co. v. John B. Barnard. Acc't. \$196 28. Piffs atty, N. H. Miller.
- AUGUST 22, 1883.  
24693. Mathew G. Emery v. Bennett B. Smith et al. Account, \$180. Piffs atty, A. B. Duvall.  
24694. William G. Bamberger v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Piffs attys, Hine and Hagner & Maddox.  
24695. John Sole v. Robert B. Ferguson. Note, \$1,250. Piffs attys, Ross & Dean.
- AUGUST 23, 1883.  
24696. Jos. M. Wheatley v. Henry Conradis. Note and account, \$105.95. Piffs atty, C. A. Walter.  
24697. Henry M. Knight v. The Baltimore & Potomac R. Co. Damages, \$10,000. Piffs attys, Hine and Hagner & Maddox.  
24698. Chas. A. Anderson v. The Baltimore & Potomac R. Co. Damages, \$5,000. Piffs attys, Hine and Hagner & Maddox.  
24699. Susan Fitzgerald v. The Baltimore & Potomac R. Co. Piffs attys, Payne and Hagner & Maddox.
- AUGUST 24, 1883.  
24700. William H. Veerhoff v. Henry Conradis. Judgment of Justice Walter, \$31 69, docketed.  
24701. James H. Johnson v. The Baltimore & Potomac R. Co. Damages, \$20,000. Piffs attys, Hagner & Maddox.  
24702. Charles B. Church v. The Baltimore & Potomac R. Co. Damages, \$10,000. Piffs attys, Hagner & Maddox and Hine.  
24703. James E. Morgan v. The Baltimore & Potomac R. Co. Damages, \$10,000. Piffs attys, Hine and Hagner & Maddox.
- AUGUST 25, 1883.  
24704. William T. Walker v. The Baltimore & Potomac R. Co. Damages, \$10,000. Piffs attys, Hine and Hagner & Maddox.  
24705. James F. Brown v. The District of Columbia. Appeal. Piffs atty, A. B. Duvall. Defts atty, A. G. Riddle.

### IN EQUITY.—New Suits.

- AUGUST 20, 1883.  
24706. Patrick B. Dunn v. Bridget Murt et al. Com. sols., Taggart and Beall.
- AUGUST 21, 1883.  
24707. Fannie A. Stephens v. Mary A. Proctor et al. To sell. Com. sol., John E. McNally.
- AUGUST 22, 1883.  
24708. Malinda Brown v. William B. Moses et al. To restrain. Com. sol., Thos. J. Mackey.  
24709. Lewis J. Davis et al. v. William C. Murdock et al. Creditors' bill. Com. sols., Carusi & Miller.

### PROBATE COURT.—Justice James.

- AUGUST 16, 1883.  
Estate of Catharine Sparks; statement of administrator in lieu of an account filed.
- AUGUST 17, 1883.  
Estate of Jonathan Taylor; letters granted; administratrix bonded.  
Estate of Jane Turnbull; son and daughter appointed administrators; bonded.  
Estate of Carl E. Worch; administrator appointed and bonded.  
Estate of Mary Wilson; order of publication.  
Estate of Caroline A. Laddie; administratrix ordered to make full report; time fixed for argument.  
Estate of Wm. Adams; oedicle proved by one witness.  
Estate of Bernhard Berens; will fully proved.  
Estate of James Murt; widow appointed administratrix; bonded.  
Frank N. Fall, guardian; allowance granted to complete education of orphans.  
Accounts passed:  
Estate of Dorinda Steptoe; third account of administrator.  
Estate of John G. Waters; third account of executor.  
Eliza C. Jackson, guardian; third account of guardian.  
Estate of Dennis Dunn; administratrix bonded and qualified.
- AUGUST 20, 1883.  
Estate of John W. Morrell; bond of Mary E. Morrell, administratrix; completed.

Estate of Charles Hillyer; bond of Josephine Hillyer, administratrix; completed.

August 21, 1883.

Estate of Abby L. Bodfish; inventory of money and list of debts returned by F. D. Sewall, administrator.  
Estate of Edward E. Anderson; inventory of personality returned by administrator.

August 22, 1883.

Estate of Richard Joseph; petition of Lizzie Joseph, for letters of administration.  
Estate of Resin A. Miller; inventory of personality returned by administrator.

August 23, 1883.

The last wills and testaments of Charles E. Berkley and Robert Campbell; were filed for probate.

August 24, 1883.

Estate of Bernhard Berens; petition of Magdalena Berens for letters testamentary. &c.

Estate of Ida K. Davis; will admitted to probate and letters testamentary granted to Robert G. Dyrenforth; bond, \$4,000.

Estate of John Connor; petition of Mary Connor for letters testamentary, bond, \$600, bonded and qualified.

Estate of Benjamin F. Grafton; will fully proved, Virginia A. Grafton appointed administratrix; bond, \$4,000.

Estate of Mary Palmer; petition of William Mayse for letters testamentary.

Will of Charles Weaver; proved by two witnesses.

Estate of Samuel Kirby; petition of Arthur B. Olaxton for letters, order of publication returnable Sep. 21, 1883.

Estate of Chas. E. Berkley; will fully proved and letters granted to Arthur Clements; bond, \$600.

Estate of John P. Millard; petition of James E. Waugh for letters; order of publication returnable Sep. 21, 1883.

Estate of Ellab Kingman; inventory of money and list of debts returned by executors.

Estate of George Barber; third account of executors.

Estate of Henry Washington; first account of administrator.

Estate of Daniel Ballauf; Herman H. Wurdemann appointed guardian to infant children.

Estate of William Ryan; appointed guardian to orphans of Albert and Margaret Cumberland.

Estate of Mathias L. Allg; report of executors filed and order directing account to be stated.

August 25, 1883.

Estate of Joseph Reese; inventory of personality returned by Emma L. Reese, exchange, \$152.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

SUSAN BROWN ET AL. }  
v. } Equity. No. 5602.  
CHARLES F. BROWN ET AL. }

The trustee, Samuel Maddox, having reported to the court that he has sold the real estate in the proceedings in this cause mentioned, to wit, the east thirty-five feet front by the full depth of original lot 6, in square 158, on the ground plan of Washington City, in the said District to Lawrence Sands, at and for the sum of \$4,681 24 and that the said purchaser has fully complied with the terms of sale:

It is, by the court, this 31st day of August, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of September, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

By the Court. A. B. HAGNER, Asso. Justice.  
True copy. Test: 34-3 R. J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 24, 1883.

In the matter of the Estate of Samuel Kirby, late of Washington City, District of Columbia, deceased.  
Application for the Probate of the last Will and Testament and of Codicil thereto and for Letters Testamentary on the estate of the said deceased has this day been made by Arthur B. Olaxton, the sole executor therein named.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
APFLEBY & EDMONSTON, Solicitors. 34-3

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. August 24, 1883.

In the matter of the Estate of John P. Millard, late of the city of Washington and District of Columbia, deceased.  
Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth Sizer, nominating James E. Waugh, as Administrator.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
E. A. NEWMAN, Solicitor. 34-3

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 17, 1883.

In the matter of the Estate of Mary Wilson, otherwise Mary Sayre.

Application for Letters of Administration on the estate of said Mary Wilson otherwise Mary Sayre, of the District of Columbia, has this day been made by Rebecca Hinton.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
A. O. RICHARDS, Solicitor. 35-3

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Case, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.  
35-3 IDA L. CASE, Executrix.

THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary G. Harris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1883.  
35-3 HANNA & JOHNSTON, Solicitors. ROBT. S. CHEW.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis Dunn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of August, 1883.  
35-3 ANNIE DUNN.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Coyne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of August, 1883.  
35-3 B. F. RITTENHOUSE, Administrator c. t. a.  
GORDON & GORDON, Solicitors.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Pywell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1883.

EDWIN F. PYWELL,  
A. M. PYWELL,  
ROBERT T. PYWELL,

E. D. WRIGHT, Solicitor. 33-3 Executors.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN H. KETCHUM ET AL.

THE PRESIDENT AND DIRECTORS  
OF GEORGETOWN COLLEGE ET AL.

No. 7,897. Equity.

Henry D. Cooke, Jr., and Charles A. Elliot, having reported a sale of lot No. 32, of Moses Kelly's sub-division of square No. 867, in the city of Washington, District of Columbia, for \$71.40, to Hermione M. Chappel, also lot No. 38, in same sub-division to Hermione M. Chappel, also lot No. 40, in same sub-division to John H. Ketchum, for \$181.60, also lot No. 41, same sub-division to John H. Ketchum, for \$160:

It is, this 30th day of July, A. D. 1883, ordered, that the said sales and each of them be and they are hereby confirmed unless cause to the contrary be shown on or before the 4th day of September, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 33-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES CORNELIUS ET AL.

JOSEPHINE DE VAUGHN ET AL.

Eq. 7,919. Dec. 21.

Upon consideration it is by the court this 30th day of July, 1883, ordered, that the sales reported this day by W. Wheeler and E. H. Thomas, trustees, to Sarah M. Evans, of property mentioned in said report and to James A. Hunt, of property mentioned in said report, be ratified and confirmed on the 1st Tuesday in September next, unless cause to the contrary be shown on or before said last mentioned day. Provided, a copy of this order be published once a week for each of three successive weeks on or before said day in the Washington Law Reporter, and provided, that a copy of said trustee's report and of this order be served within one week from this date on said James A. Hunt. And it is further ordered and decreed that said trustees pay all taxes and assessments, out of any money other than the money in their hands arising from said above reported sales, on property mentioned in this cause and heretofore sold by them, as far as the said money in their hands will go.

By the Court. CHAS. P. JAMES, Justice.  
True copy. 31-3 Test: R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Caroline O. Denham, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1883.

31-8 LEMUEL J. DENHAM.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

JOHN HUNTER JARDELLA

JOHN T. BULGER ET AL.

No. 8692. Eq. Dec.

On motion of the plaintiffs, by Messrs. Ross & Dean, his solicitors, it is ordered that the defendants, John T. Bulger and Rev. W. T. Durham, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 30-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. August 7, 1883.**

In the matter of the Estate of Catharine Ragan.

Application for Letters of Administration on the estate of Catharine Ragan, of the District of Columbia, has this day been made by Richard F. Harvey.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test: 32-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. August 8, 1883.**

In the case of David Hagerty, Administrator of Frank Hagerty, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 14th day of September, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
FRED. W. JONES, Solicitor for Administrator. 32-8

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT FOR SAID DISTRICT.**

EDGAR MURPHY, Complainant, vs. Unknown Heirs of GEORGE S. WASHINGTON ET AL.—In Equity, No. 8096, Docket 23.

The object of the suit by the above-named complainant, Edgar Murphy, is to procure a decree of sale of certain real estate of which George S. Washington (a colored man), died seized and possessed. The bill states, in substance, that on the 24th day of May, A. D. 1883, said George S. Washington died in the District of Columbia, intestate and unmarried, and without having any known heirs; that said deceased was, at the time of his death, indebted to complainant in \$391.66; that said deceased, being indebted to complainant and to other persons, died seized and possessed of personal property worth \$100, and two (2) pieces of real estate situate in Georgetown in said District, mentioned and described in the bill of complaint; that on the 3d October, A. D. 1878, said Washington executed a deed of trust on part of said real estate, to wit: part lot No. 82, to secure the payment of \$600 to Robert E. Frey, as Treasurer of 13th Building Association of Georgetown, and on the 27th day of December, 1882, said Washington executed another deed of trust upon the same property, to secure the payment of \$600 to said Frey, as Treasurer aforesaid; that administration upon the personal estate of said Washington, deceased, was granted unto Charles R. Kengla, and that said personal estate is not sufficient to discharge all debts due and owing by said deceased, and that the deficiency ought to be supplied by sale of said real estate.

It is thereupon, by the court, this 25th day of June, 1883, adjudged, ordered and decreed that complainant, by causing a copy of this order to be inserted in "The Evening Star," a newspaper published in the city of Washington, District of Columbia, and also in a newspaper published in Camden county, State of North Carolina, once a week in each of six successive weeks before the first day of September, A. D. 1883, give notice to the said Unknown Heirs of said George S. Washington, deceased, of the object and substance of the bill of complaint, and warn the said Unknown Heirs of said George S. Washington, dec'd., to appear in this court, in person or by solicitor, on or before the said first day of September next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHARLES P. JAMES, Justice.

A true copy. Test: E. J. MEIGS, Clerk.

30-6 By M. A. OLANOEY, Asst. Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Philip Meredith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1883.

her  
ELIZABETH M. FULTON,  
mark. Executrix.

Witness: GEO. E. JOHNSON.  
A. B. WILLIAMS, Solicitor.

31-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cornelius Hopkins, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

THOMAS J. LUTTRELL, Executor.

HINK & THOMAS, Solicitors.

31-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 28th day of July, 1883.**

MARY JOSEPHINE KEYES

No. 8666 Eq. Doc. 23.

RICHARD THORNTON KEYES.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Richard Thornton Keyes, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 31-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JAMES F. HALIDAY ET AL.

No. 934 Equity. Rule 6.

THOMAS J. HALIDAY ET AL.

James S. Edwards, trustee herein, having reported a sale of original lot sixteen (16), in the square one hundred and four (104), in Washington City, in the District of Columbia, to John R. Francis, for \$1,840.40;

It is, this 30th day of July, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 4th day of September, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice  
A true copy. Test: 31-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henrietta Dorsey Handy, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

E. D. F. BRADY, Solicitor. LOUISA WILSON.

30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John W. Starr, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of July, 1883.

SARAH M. STARR, Executrix.  
HAGNER & MADDOX, Solicitors.

22-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of August, 1883.**

ELIZABETH J. MEEM and others

No. 8,671. Eq. Doc.

v. HENRY MARDEN and others.

On motion of the plaintiffs, by Mr. E. P. Jackson, their solicitor, it is ordered that the defendants, Henry Marden, Thomas Marden, John M. Marden, Hannah M. King, Charlotte M. Winn, Albert M. Winn, Annie M. Moorman and Robert M. Moorman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy Test: 32-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Isabella Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of July, 1883.

FRANCES R. R. BROMWELL,  
ISABELLA HAGNER.

30-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martha A. Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of July, 1883.

30-3 JOB BARNARD, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Bennett Lee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1883.

REBECAH W. LEE, Administratrix.  
A. C. RICHARDS, Solicitor.

30-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 23d day of July, 1883.**

ELIZA A. OFFUTT

No. 8634. Eq. Doc., 23

v. GEORGE A. BOHRER AND OTHERS

On motion of the plaintiff, by Mr. R. P. Jackson, her solicitor, it is ordered that the defendants, John M. P. Clitz, Mary Clitz, Julius S. Bohrer, Lucinda Bohrer, B. Rush Bohrer and William H. Bohrer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 30-3 R. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 31st day of July, 1883**

RUFUS A. MORRISON

v.

CATHARINE BOYLAND AND THE  
UNKNOWN HEIRS AT LAW OF  
MICHAEL DOYLE.

No. 8660. Eq. Doc. 23.

On motion of the plaintiff, by Mr. James H. Smith, his solicitor, it is ordered that the defendants, the unknown heirs at law of Michael Doyle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 30-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Reuter, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

CHARLES WALTER, Executor.

CHAS. A. WALTER, Solicitor.

29-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of July, 1883.**

AUGUSTA McBLAIR ET AL,  
Complainants

THOS E. WAGGAMAN ET AL,  
Defendants.

No. 8658. Eq. Doc. 23.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Sarah Ann Newton, Catharine Ann Munson, Miles C. Munson, Margaret M. Summers, Simon L. Summers, Amelia A. Harris, Marcellus W. Harris, Ella L. Siapp, Butler B. Siapp and William D. W. Newton, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 30-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert B. Wagner, M. D., late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

29-3 CHAS W. SMILEY, Administrator.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of John Keithley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

O. F. ROWS, Solicitor. ALBERT HARPER. 29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Washington Danforth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of July, 1883.

DANIEL O'C. CALLAGHAN,  
Administrator, 436 7th street, n. w.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lawrence B. Byrne, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of July, 1883.

29-3 CHARLES E. OREOOT, Administrator.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Edward Hammersley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

CATHERINE HAMMERSLEY, Executrix.

W. W. BOARMAN, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Joseph H. Hanlein, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

CAROLINE HANLEIN, Executrix.

LEON TOBRINER, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Susan S. March St. Clair, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

JAY STONE, Administrator, c. t. a.

ROBERT CHRISTY, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jane E. W. Kelly, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1883.

EDMUND KELLY, Administrator c. t. a.

JAMES H. SMITH, Solicitor.

29-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Ewing, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1883.

WILLIAM B. WEBB,

CHAS. J. LUSK,

Administrators.

29-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Francis Dalton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1883.

HENRY E. DAVIS, Administrator c. t. a.

29-3



# Washington Law Reporter

WASHINGTON - - - - - September 8, 1883.

GEORGE B. CORKHILL - - - EDITOR

## Two Kinds of Knowledge.

The lawyer does not proceed very far in his professional experience before he finds out that there are two very different kinds of knowledge useful to him—knowledge having continual use and permanent value, and knowledge having only transient use. Those who learn to discriminate somewhat between the two, save themselves some trouble, in more readily remembering that which it is profitable to retain, and forgetting that which becomes useless.

This is a distinction which students would do well to notice, and which ought to have more influence than it does upon the course of study and methods of instruction in law schools, especially towards the close of the course.

A part of the knowledge which a lawyer has to acquire is permanent in its relation to his work; that is to say, its usefulness is nearly as continuous as is his employment. A lawyer engaged in general practice, for instance, having to do with the details, or a managing clerk, will have, in the course of years, hundreds of complaints and answers to draw, attachments to issue, orders of arrest to procure, foreclosures to conduct, and the like. While some provisions of the Code he will rarely refer to, he will have constant occasion to act under some others, or to advise on the rights of parties depending on the Statute of Frauds or the Statute of Limitations; and there are other classes of cases, of course, of which the recurrence will be very frequent. Knowledge of these subjects is permanently valuable in proportion as it is definite, clear, positive and literal.

If one is engaged in a special department of the profession, the same principle applies. If he has nothing but insurance cases to try, or patent cases, or admiralty cases, his field is different, but within it there are certain frequently recurring principles and rules with which he cannot be too familiar, and on which he cannot have too confident a hold. But in either case there will be a great variety of minor subordinate topics or subjects of less frequent occurrence, in which it is not worth while to attempt the same exactness and readiness of knowledge.

One great art of growth for a young lawyer

is to be able to survey his field of labor and exercise good judgment in regard to the relative value of what he learns. To most of us it is impossible to carry it on in a completely retentive memory all that we learn. It is inevitable that one should either select or be slack.

Among the things of which a lawyer's knowledge has, relatively speaking, only a transient use, are the knowledge of the facts of his case in hand, the knowledge of the details of the state of authorities on the questions involved in that case. Exactness, clearness and confidence are equally important in those matters while the necessity lasts. But its permanent retention is not. On the contrary, it may well be that with minds long taxed with multiplied details it is desirable that, after the use has passed, the recollection shall pass away too.

Physiologists would describe the same thing by saying that the cells, or the cell room in the brain, that was occupied by these impressions of temporary value, are absolutely required for the storing of other and new knowledge to be temporarily useful in another case; and that it is as desirable to get rid of one kind of knowledge as soon as its use is done as it is to retain the other kind as long as its usefulness continues. We are not prepared to say that it is desirable that the reader should forget any one item of knowledge he has acquired, but only that if he finds it unavoidable that he should forget something, he may well endeavor to choose what to forget and what to retain.

The process of preparation for examination which a law student goes through illustrates the importance of this distinction, and the disadvantage which results from not attending to it. In a law student's cramming for examination there is something very analogous to a lawyer's preparation for the trial of a great case. He labors night and day to fill his mind with a multiplicity of details, not knowing upon what he may be called to respond, but he desires to be prepared at every point. And, naturally, after the examination is over, he rapidly begins to forget all that to which his subsequent experience or reading does not call his attention.

The instructor in the law, and still more the practitioner looking forward to his career, should inform himself as well as may be as to what legal principles and rules, what constitutional provisions, what statutory clauses, what rules of court, are to be of most constant application in the business of the future, and what the most important modern leading cases selected upon the same principle.



These are the mental tools of the lawyer. If one should give something of the same attention to retaining what he has already acquired of these that he does to acquiring new knowledge, and make it a point to keep the most essential of them as clear and fresh in his memory as he does the multiplication table or the rule of three, or as a sailor does the boxing of the compass, he might safely trust more to the intervals of practice to inform himself on the rules less frequently invoked in his business, and thus gain more time to master the great fundamental and underlying principles of legal jurisprudence, in which, after all, lies the strength of the man who is to use the tools of which we have spoken.—*N. Y. Daily Register.*

## Supreme Court District of Columbia

### GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY

CLIFTON ANDERSON AND JULIA ANN FOX  
vs.

WILLIAM SMITH.

LAW NO. 26,636.

{ Decided March 5, 1883.  
The CHIEF JUSTICE and Justices HAGNER  
and COX sitting.

1. In ejectment in this District the general rule is that in making proof of record title the plaintiff must go back to the original source and show a grant either from the State of Maryland or the United States and then if there should be a hiatus in the chain of title, twenty years possession in conformity with the deeds will raise a presumption of the missing links. But when both parties claim title from the same source it is not necessary to go beyond that source.
2. In such an action, when the plaintiff has failed to trace title from the State of Maryland or the United States, and the defendant, instead of resting upon that defect, goes on with his evidence and in the course of it shows that he is claiming from the same source as the plaintiff the defect in the plaintiff's proof will be cured.
2. The relationship of a deceased party cannot be established by his own declarations but must be proved *aliunde*; when however that relationship is once established, his declarations as to kinship of other parties are admissible.
4. An exception to this rule is allowed only in cases of very ancient pedigree where it is impossible to find proof of the declarant's relationship otherwise than by his own declarations, but even in that case some degree of evidence is required.
4. A party has a right to designate his own heirs; whether he be mistaken as to the relationship or not concerns no one but himself; declarations of a deceased party upon that subject are therefore properly admissible.

5. Proof that plaintiff's parents, who were slaves, lived together in Virginia as man and wife, without proof of a marriage either according to law or according to any custom prevailing at the time in any State, cannot be received as evidence of the legitimacy of their offspring.
6. The provisions of section 724, Revised Statutes of the District of Columbia, in relation to the co-habitation of colored persons previous to their emancipation, applies only to those who were residents of the District of Columbia.
7. In an action of ejectment plaintiff should show that the defendant was in possession.

THE CASE is stated in the opinion.

J. McDOWELL CARRINGTON and R. B. LEWIS for plaintiff.

REGINALD FENDALL and E. A. NEWMAN for defendant.

Mr. Justice Cox delivered the opinion of the court.

These plaintiffs are colored people, who have brought this action of ejectment to recover a small piece of land outside the city, in the county of Washington. They claim to be the nephew and neice of James Taylor, and the children of a colored man named Ben. Anderson. Both Taylor and Anderson having been formerly slaves in Virginia.

The case has already been twice tried, and we therefore have great reluctance in sending it back. But it seems to us that the record discloses errors which were prejudicial to the defendant, and at the same time discloses possibilities of a better case for the plaintiffs.

In order to make out title in the first instance, at the trial, the plaintiffs produced in evidence the decree of this court passed in 1819, for a sale of this property, and a subsequent regular chain of conveyances down to James Taylor, the *propositus*, and rested upon that as proof of title.

The defendant objected that that was not sufficient proof of title; that it was incumbent on the plaintiffs to go back to the original source of title, the State of Maryland or the United States, there being in this case no proof of possession in conformity with the deeds, but simply record title from 1819 to 1871. The court below held that this was sufficient proof of title.

There was, as we think, error in that. But perhaps it may be cured, as we shall see hereafter.

Undoubtedly, the general rule is, that in seeking to make out proof of record title, the plaintiff must go back to the original source, and show a grant from either the State of Maryland or the United States, and then if there should be a hiatus in the chain of title,

twenty years' possession in conformity with the deeds will raise a presumption of the missing links. It is not absolutely necessary, therefore, to show a regular succession of conveyances from the State all the way down. In this case there was no possession shown, but simply the naked proof of record title from 1819 to 1871, and the court erred in ruling that that was sufficient proof.

But there is another rule of law which may obviate the difficulty, and that is, where both parties claim title from the same source, it is not necessary to go beyond that source. For example, one man claims to be the heir of a decedent, and another claims to be his devisee. In an action by one against the other, it is not necessary to prove the title of the decedent. The only question is, who has derived title from him?

In the next place, the defendant, instead of resting upon the defect in the plaintiffs' proof, went on, himself, to prove that the title of James Taylor, which the plaintiffs claim to have inherited, had been devised by him to Mary A. Smith, wife of the defendant.

So that the defendant then showed that he relied upon a title derived from the same source as that upon which the plaintiffs depended. As far as the first error is concerned, it must be held to have been cured by the defendant.

Further on, after having shown a record title down to James Taylor, in order to establish the relationship between plaintiffs and James Taylor, they offered in evidence the declarations of Ben. Anderson, their father, that he was the brother of James Taylor. The form in which the offer is made, as stated in the bill of exceptions, is this:

That, previous to his father's death, which occurred in 1867, his father told him that he, Ben. Anderson, had a brother named James, who, when quite young, was sold in slavery to a man named Taylor, in Virginia, and afterwards to a man named Allen and that he (Ben Anderson) had no other brother and no sister.

That does not seem to go very far towards establishing the fact that this James Taylor was the Virginia James Taylor. The only proof is, that he was sold to a man named Taylor; but whether that brother assumed the name of his master, and became James Taylor, is not pretended to be testified to.

But suppose the brother had been identified, the question then arises, whether the declarations of a deceased party are sufficient to establish his relationship to another deceased party. The declarations are objected to on two grounds: 1st. The *witness* is not proved

*aliunde* to be a relation of the family; and, 2nd. That the deceased, whose declarations are offered in evidence, are not proved *aliunde* to be such.

The rule on that subject is, that you cannot establish the relationship of the declarant himself by his own declarations, but that the relationship must be proved *aliunde*; and when once that is established, then his declarations as to kinship of other parties are admissible. This was settled in the case of Banbury, and other cases, in England. In that case a bill in chancery in the first instance, by one as next friend of an infant, was offered in evidence, wherein the complainant describes himself as the uncle of the infant in question. And the answers of other parties, speaking of their relationship to the infant, were offered, all of them being dead. These were offered in evidence as the declarations of deceased persons, in order to prove the legitimacy of the infant in question. The question was submitted by the House of Lords to all the judges, and they unanimously held that such declarations could not be received in evidence without proving *aliunde* that the uncle and the other so-called relatives were related to the infant.

There is an exception allowed only in cases of very ancient pedigree, where it is impossible to find proof of the declarant's relationship otherwise than by his own declarations. But even in that case, it is said in Phillips on Evidence:

"Still some degree of evidence is required, otherwise a mere stranger, by claiming alliance with a family, might assume the power of materially altering the rights of its several branches by making statements in his lifetime respecting them."

The same question was settled in the case of the Leigh Peerage and Berkley Peerage cases. In which it was held that the relationship of the declarant must be established *aliunde*.

It seems to us therefore, that the declarations of Ben. Anderson, the father of the plaintiffs, were not admissible to show that he was the brother of James Taylor.

The proof was followed up by the statements of several people who lived on the adjoining plantation to James Taylor that they had heard both James Taylor himself and Ben. Anderson declare that they were brothers. Those declarations were excepted to. As far as the exception relates to the declarations of Ben. Anderson, the same observations might be made as to the declarations referred to in the second exception. The declarations of James Taylor, however, are not open to

that objection. There is no reason why they should not be received. He has the right to designate his heirs; whether he be mistaken as to the relationship or not concerns no one but himself. His declarations were properly admitted.

In the fourth exception it appears that the plaintiffs offered evidence tending to show that Ben. Anderson and Chloe Anderson were both slaves and lived on the same plantation as man and wife. And then the plaintiffs rested, without offering any proof tending to show a marriage between the father and mother of Ben. Anderson, or that Ben. Anderson, the father, and Chloe, the mother of the plaintiffs, were married. In other words, the plaintiffs content themselves with proving that the father and mother of the plaintiffs lived together as slaves and as man and wife, but offered no proof of marriage, either according to law or according to any custom prevailing at the time in any State. The defendant's counsel prayed the court to instruct the jury that, in the absence of such testimony, they must find for the defendant; which the court refused.

Ordinarily, we know, marriage must be established by proof of marriage rites, according to law. There is, however, an act of Congress, approved 6th of February, 1879, which provides, in substance, that the issue of colored persons cohabiting as man and wife, according to the custom prevalent in the state before the emancipation of slaves, shall be deemed legitimate.

But there is no proof in this case, of any marriage, nor is there any proof of the custom in that regard. Section 724, R. S. D. C., provides: that, "all colored persons in the District, who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other, of husband and wife, and were cohabiting together as such, or in any way recognizing the relation, as existing on the 25th day of July, 1866, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges, and subject to the duties and obligations of that relation, in like manner, as if they had been duly married, according to law." That applies, however, only to those who resided in the District of Columbia, and therefore it is not urged in this case. But there is a statute of Virginia, on this subject, passed some time in 1866, almost *in totidem verbis*, with the statute of the District of Columbia, which applies to former slaves, who were cohabiting as man and wife at the date of the statute, and their offspring.

In this case, however, although it is testified that Ben. Anderson and Chloe, lived as man and wife, it does not appear that they continued to occupy that relation at the time the act of Virginia was passed. There is no evidence on that subject. It would be quite prudent, perhaps, for the plaintiffs, in another trial, to offer that Virginia act in evidence.

But, as the case now stands, the proof does not come up to the requirements of the law, as establishing lawful marriage between the parents of these plaintiffs, and that exception, we think, is well taken. And that is sufficient to dispose of the case, and involve the necessity of a new trial.

Before we leave the case, however, there is one other matter to be adverted to:

The defendant offered a paper purporting to be the will of James Taylor, whereby this real estate was devised to Mary A. Smith; and he has offered evidence further, to show that she took sole possession of such real estate, upon the death of Taylor, by virtue of his will, and has ever since claimed to own the same by virtue thereof.

This suit is brought against the husband, (Wm. Smith,) of the devisee, in that alleged will. It is not proved in the case that he was in possession of, or that he claimed to own the property. This was not, however, formally excepted to by the defendant, and the defendant, on his part, undertook to show that Mary A. Smith, his wife, had this property devised to her, and took possession of it in pursuance of the devise; in this argumentative way, showing that defendant did not claim. I merely suggest this now, to show that on another trial, the plaintiffs had better prove affirmatively that the defendant was in possession.

For the foregoing reasons, a new trial is granted.

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FIVE men were arrested in Philadelphia for working on Sunday, in repairing the track of the Philadelphia & Reading Railway. At the hearing before a magistrate, they were discharged on the ground, that the work was necessary to the public welfare, which would be interfered with, by repairs on week days involving the stopping of trains.

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A LEGAL gentleman met a brother lawyer on Court street one day last week, and the following conversation took place: "Well, Judge, how is business?" "Dull, dull; I am living on faith, and hope." "Very good, but I have got past you, for I'm living on charity."

## United States Supreme Court.

No. 286.—OCTOBER TERM, 1882

NEW JERSEY ZINC COMPANY v. TROTTER.

*In Error to Circuit Court of the United States for the District of New Jersey.*

The jurisdiction of the Supreme Court is determined by the value of the matter in dispute therein, and for the purpose of estimating such value reference can be had only to the matter actually in dispute in the particular cause in which the judgment to be reviewed was rendered, and not to the collateral effect of the judgment in another suit, between the same or other parties.

Hilton v. Dickinson, *ante*, 424, and Town of Elgin v. Marshall, 1 Sup. Ct. Rep., 484, followed.—*N. J. Law Jour.*

On motion to dismiss.

Mr. Chief Justice Waite delivered the opinion of the court:

This was an action of trespass brought by Trotter to recover damages of the New Jersey Zinc Company for entering on his lands and digging up and carrying away a quantity of franklinite ore. There were three counts in the declaration—two *quare clausum fregit*, and one *de bonis asportatis*. The plea was not guilty. No other issue was raised by the pleadings. Neither party set up title, so that the only matter in dispute was the liability of the Zinc Company to pay for the ore which it was alleged had been wrongfully taken and carried away. Trotter recovered a judgment for \$3,320 damages, and \$752.25 costs of suit. From that judgment the Zinc Company brought this writ of error, which Trotter now moves to dismiss because the value of the matter in dispute does not exceed \$5,000.

As we decided at the present term in Hilton v. Dickinson, *ante*, 424, our jurisdiction is determined by the value of the matter in dispute in this Court, and the matter in dispute here in the present case is the judgment below for less than \$5,000. It may be that the question actually litigated below related to the title of the parties to the land from which the ore in controversy was taken, and that the verdict will be conclusive on that question as an estoppel in some other case; but, as was also said at the present term, in Elgin v. Marshall, 106 U. S. 579 [S. C., 1 Sup. Ct. Rep., 484], for the purpose of estimating the value on which our jurisdiction depends, reference can only be had to the matter actually in dispute in the particular cause in which the judgment to be reviewed was rendered, and we are not permitted to consider the collateral effect of the judgment in another

suit between the same or other parties. It is the money value of what has been actually adjudged in the cause that is to be taken into the account, not the probative force of the judgment in some other suit. Here the thing and the only thing adjudged is that the Zinc Company was guilty of the particular trespass complained of, and must pay Trotter \$3,320 for the ore taken away. Had the Zinc Company pleaded title to the land from which the ore was taken, and issue had been joined on that plea, a different question would have been presented. In that way, the land might have been made the matter for adjudication, and thus the matter in dispute on the record. But, as this case stands, only the possession of Trotter and his right to the ore are involved. It may be that, in order to find possession in Trotter, the jury were compelled to find that he had title to the land, and that in this way the verdict and the judgment may estop the parties in another suit; but that will be a collateral, not the direct, effect of the judgment.

The motion to dismiss is granted.

## Circuit Court of the United States.

JOHN STEWART vs. WILLIAM M. MCGRUDER Treasurer; JOSEPH BRYAN vs. WILLIAM M. MCGRUDER, Treasurer; DANIEL STEWART vs. WILLIAM M. MCGRUDER, Treasurer; A. AUSTIN SMITH, Treasurer, vs. S. C. GREENHOW, Treasurer; SAMUEL S. CARTER vs. S. C. GREENHOW, Treasurer.

*Eastern District of Virginia.*

DELIVERED SEPTEMBER 4, 1883. BOND, J.

Coupons a legal tender for taxes.  
Jurisdiction of the United States Circuit Court.

Of the above-named five suits, the first and second are suits in equity, brought in each case by a citizen of the State of Virginia, against the treasurer of Henrico county, in the State of Virginia, to restrain and enjoin the said treasurer from levying on or selling the property of the plaintiff for taxes in payment of which the plaintiff has tendered coupons of bonds of the State of Virginia, made receivable for taxes by the laws of Virginia.

The third is a suit in equity brought for the same purpose by a citizen of the Kingdom of Great Britain and Ireland.

The fourth is an action of trespass brought, originally in a State court of Virginia by a citizen of Virginia and removed thence to this court.

The fifth is an action of trespass brought

originally in this court by a citizen of Virginia, to recover damages of the defendant, the treasurer of the city of Richmond, on the ground that the plaintiff is deprived of a right secured to him by the constitution of the United States by a seizure of his property under color of statutes of the State of Virginia.

The first and second suits, being brought in this court by citizens of the State of Virginia against a citizen of the same State, involve a question of jurisdiction, which it is necessary to examine and decide.

The jurisdiction of the circuit courts of the United States, was originally fixed by section 11 of the act commonly known as the Judiciary Act of September 24, 1789, and was expressed in these words:

"That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State."

The incidents of a suit cognizable in this court under the above section are:

First. A matter in dispute exceeding five hundred dollars.

Second. The United States as plaintiffs; or

Third. An alien as a party; or

Fourth. The suit is between a citizen of the State where the suit is brought, and a citizen of a different State.

In other words, the suit must in all cases, involve the value of five hundred dollars, but as to its other incidents, it may be brought in either of three events, viz.:

(1.) When the United States are plaintiffs.

(2.) When an alien is a party.

(3.) When the suit is between citizens of different States.

The jurisdiction here defined, remained unchanged till the passage of the act of March 3, 1875, entitled, "An act to determine the jurisdiction of the circuit courts." &c.; (Supplement to Rev. Stat., vol. 1, p. 173,) which is in these words:

"That the circuit courts of the United States, shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made under their au-

thority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign States, citizens or subjects."

This section defines the present jurisdiction of this court.

In analyzing this section, we find the jurisdiction is still, as in the original law, limited in the first instance to cases where the value in dispute exceeds five hundred dollars, but that a new incident of jurisdiction is then added, viz.:

That the case be one "arising under the Constitution or laws of the United States, or treaties made or which shall be made under their authority."

It is perfectly clear that under this act a suit is cognizable in this court, if—

(1.) The value in controversy exceeds five hundred dollars; and

(2.) The case is one "arising under the Constitution or laws of the United States."

In such a case, this court has precisely the same jurisdiction as it would have in a case in which

(1.) The United States were plaintiffs; or

(2.) In which there was a controversy between citizens of different States; or

(3.) Between citizens of the same State claiming lands under grant of different States; or

(4.) Between citizens of a State and foreign States, citizens or subjects.

We repeat that under this act every case over which the Court can have jurisdiction must first, involve an amount exceeding five hundred dollars, and, second, it must have some one of these four incidents or characteristics, viz.:

(1.) It must arise under the constitution or laws of the United States.

(2.) The United States must be plaintiffs.

(3.) There must be a controversy between citizens of different States; or

(4.) Between citizens of a State and foreign States.

If a suit involves a sum of over five hundred dollars, and arises under the constitution or laws of the United States, this court has jurisdiction precisely as it would have if a suit involved the sum of over five hundred dollars, and the United States were plaintiffs, or if it involved the sum of over five hundred dollars, and the controversy were between citizens of different States.

We do not see how anything can be more

demonstrably certain than this result, and it is only necessary, in the present cases, to inquire further:

I. What is the meaning of the words "arising under the Constitution or laws of the United States?"

II. Whether the present are cases "arising under the Constitution or laws of the United States?"

I. The words "arising under the Constitution or laws of the United States," are first found in the grant of judicial power, contained in article III, section 2, of the Constitution of the United States, where these words are found:

"The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States," &c.

The entire jurisdiction of the Supreme Court on writs of error to a State court, is drawn from this section, which confers on the Supreme Court appellate jurisdiction, in all cases "arising under the Constitution or laws of the United States."

So that the question whether a case is reviewable on writ of error from the Supreme Court of the United States, to a State court always turns solely on the question whether it is a case "arising under the Constitution or laws of the United States."

Hence the terms in which the United States statute defines the cases in which a writ of error will lie to a State court, are an exact definition of the words, "arising under the Constitution or laws of the United States."

The language of that statute is as follows:

Final decrees and judgments in the highest court of a State, may be re-examined, &c., in the Supreme Court of the United States on writ of error in any suit—

(1.) Where is drawn in question, the validity of a statute of, or an authority exercised under the United States, and the decision is against their validity; or

(2.) Where is drawn in question, the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity: or

(3.) Where is drawn in question, the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption, specially set up or claimed by either party, under such clause of the said Constitution, statute, treaty or commission.

Here are specified, three classes of cases in which a writ of error will lie, viz.:

First. Where the validity of a statute or authority of the United States is in question.

Second. Where the validity of a statute or authority of a State is in question, as being repugnant to the Constitution or laws of the United States.

Third. Where the construction of any clause of the Constitution, or statute or commission of the United States, is in question.

All these classes of cases are "cases arising under the Constitution or laws of the United States," for, as we have seen, it is solely from these words in article III, section 2, of the Constitution, that the power of the Supreme Court, to review decrees of State courts is drawn.

In these three specified classes, therefore, is found, as we have said, the exact definition of the words, "cases arising under the Constitution or laws of the United States."

To repeat now, what we have already established, we say, that if in the present cases, the first and second, we have cases in which, first, the value in controversy exceeds five hundred dollars, and second, "arises under the Constitution and laws of the United States," then we have cases falling within the cognizance of this court; or, in other words, if here we have cases in which (1) there is a matter in suit of the value of over five hundred dollars, and (2) if the suit is one in which is involved either (a) the validity of a statute or authority of the United States, or (b) the validity of a statute, or authority of a State, on the ground that it is repugnant to the Constitution or laws of the United States, or (c) the construction of any clause of the Constitution, or statutes or commission of the United States, then this court has jurisdiction.

Looking now into the first and second case, *John Stewart v. McGruder*, treasurer, and *Joseph Bryan v. the same*, we find that the complainant, in each case, in his bill of complaint, after setting forth his grounds of complaint, which are, in brief, that the defendant is illegally and wrongfully threatening and intending to enforce, by levy and distress, payment of a tax for which complainant has already tendered payment in coupons of bonds made receivable for taxes by the laws of Virginia—explicitly alleges that "when the State of Virginia issued the coupons in question she entered into a valid contract with whoever might be the holder thereof to receive the same in payment of taxes and to be exempt thereafter from any obligation to pay his taxes in any other mediums of payment"—and that the act of the General As-

sembly of Virginia, approved January 26, 1882, forbidding collectors to receive coupons in payment of the same, and the act of the General Assembly of Virginia, commanding the collectors to levy for the same, after the tender of coupons, are repugnant to section ten of article one of the Constitution of the United States, and are therefore void, and that the said defendant, in proceeding to levy upon your orator's property, in obedience to the provisions of said acts, is depriving your orator of a right guaranteed and secured to him by the Constitution of the United States.

Here the grounds of the complainant's case are the allegations, first, that the defendant threatens to do the wrong under authority of two acts of the General Assembly of Virginia; and, second, that said acts are repugnant to the Constitution of the United States.

Here, then, certainly is a case in which, to quote again the language of the United States statute above cited, "the validity of a statute or authority of a State is drawn in question as being repugnant to the Constitution or laws of the United States."

Here, then, is a case in which this court has express and unquestionable jurisdiction.

No case can well be imagined in which the requirements or incidents of jurisdiction—that it should be a case "arising under the Constitution or laws of the United States"—would be clearer.

II. Let us now see if this conclusion is in accordance with the decisions of the courts, and especially of the Supreme Court of the United States.

In *Coal Company v. Blatchford*, 11 Wall., 172, Judge Field thus states the jurisdiction of the circuit courts of the United States under the old law, or the eleventh section of the Judiciary Act of 1789:

"The eleventh section of the Judiciary Act of 1789, vests in the circuit courts original jurisdiction of suits of a civil nature at common law or in equity when the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, in three classes of cases: 1st. When the United States are plaintiffs or petitioners; 2d. When an alien is a party; 3rd. When the suit is between a citizen of the State where the suit is brought and a citizen of another State."

The first case in which the Supreme Court of the United States had occasion to pass upon the meaning of the words of the act of March 3, 1875, "arising under the Constitution or laws of the United States," was the case of *Railroad Company v. Mississippi*, 92 U. S., 135, decided in 1880.

In this case a petition for mandamus was

filed by the State of Mississippi in the State court to compel a railroad company, chartered by the State, to remove a stationary bridge over the Pearl river.

The company sought the removal of the case to the United States Circuit Court, on the grounds that the right to use the bridge was vested by the charter in the company "on a contract with the State of Mississippi; that the State has no power to repudiate that contract or to impair its obligations; that it is a vested right resting on a contract, and supported and sustained by the Constitution of the United States." (P. 139.)

The answer of the company also set up the authority of an act of Congress authorizing the building and maintenance of the bridge.

Judge Harlan, in delivering the decision of the court, says:

"While the case raises questions which may involve the construction of State enactments, and also, perhaps, general principles of law not necessarily connected with any federal question, the suit otherwise presents a real and substantial dispute or controversy which depends altogether upon the construction and effect of an act of Congress. . . . Is it not plainly a case which, in the sense of the Constitution, arises under the laws of the United States? If regard be had to the former adjudications of this court, this question must be answered in the affirmative."

It is settled law, as established by well-considered decisions of this court, pronounced upon full argument, and after mature deliberation, notably in *Cobens v. Virginia*, 6 Wheat., 264; *Osborn v. Bank of United States*, 9 Id., 738; *Mayor v. Cooper*, 6 Wall., 247; *Gold Washing and Water Company v. Keyes*, 96 U. S., 199; and *Tennessee v. Davis*, 100 U. S., 257: 1. That while the Eleventh Amendment of the National Constitution excludes the judicial power of the United States from suits in law and equity, commenced or prosecuted against one of the United States by citizens of another State, such power is extended by the Constitution to suits commenced or prosecuted by a State against an individual, in which the latter demands nothing from the former, but only seeks the protection of the Constitution and laws of the United States against the claim or demand of the State.

That a case in law and equity consists of the right of one party as well as of the other, and may properly be said to arise under the Constitution or laws of the United States, whenever its correct decision depends on the construction of either.

That cases arising under the laws of the United States are such as grow out of the

legislation of Congress, whether they constitute the right, or privilege, or claim, or protection, or defence of the party, in whole or in part, by whom they are asserted.

That it is not sufficient to exclude the judicial power of the United States from a particular case that it involves questions which do not at all depend on the Constitution or laws of the United States; but when a question to which the judicial power of the United States is extended by the Constitution forms an ingredient of the original cause, it is within the power of Congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it.

This case decides expressly, first, that any cause or suit, or case "arises under the Constitution or laws of the United States," when the correct decision of such cause, suit or case depends on the construction of either the Constitution or laws of the United States. And second, that such a case arises whenever the Constitution or laws of the United States are drawn in question by the plaintiff or the defendant—that is, when they constitute the right, or privilege, or claim, or protection, or defence of either party, in whole or in part."

If only the "federal question" forms "an ingredient of the original cause," the case is one "arising under the Constitution or laws of the United States."

It certainly cannot be necessary to argue at length that in both the cases now presented to this court "the correct decision" of the case must depend on the construction of the Constitution of the United States as applied to the acts of the General Assembly of Virginia.

But the case of *Hawes v. Oakland*, 104 U. S., 450, still more completely reaches our present cases. In this case the question was of the right of a single shareholder in a corporation to bring his bill against the corporation to restrain or control the action of the corporation.

The court has occasion to refer specially to the case of *Dodge v. Woolsey*, 18 How., 331, in which a single non-resident stockholder of the Bank of Cleveland was allowed to bring his bill in the Circuit Court of the United States for the District of Ohio, against the bank. The court says that "this case was one that peculiarly belonged to the federal judiciary, and especially to this court to determine, namely, whether the Constitution of the State of Ohio violated the obligation of the contract concerning taxation found in the charter of the bank." The court thereupon proceeds to say:

"As the law then stood, there were no means by which the bank, being a citizen of the same State with Dodge, the tax collector, could bring into a court of the United States the right, which it asserted under the Constitution, to be relieved of the tax in question, except by writ of error to a State court from the Supreme Court of the United States.

"That difficulty no longer exists, for by the act of March 3, 1875, c. 137 (18 Stats. pt. 3, p. 470), all suits arising under the Constitution and laws of the United States may be brought originally in the Circuit Court of the United States, without regard to the citizenship of the parties.

"Under this statute, if it had then existed, the bank, in *Dodge v. Woolsey*, could undoubtedly have brought suit to restrain the collection of the tax in its own name, without resort to one of its shareholders for that purpose." P. 459.

Here we have an express decision that the act of March 3, 1875, permits a citizen of a State to bring suit to restrain the collection of a tax levied upon it on the ground that the levy of the tax is repugnant to the Constitution of the United States in the Circuit Court of the United States in the same State, without regard to the citizenship of the parties.

Every element and incident of the present cases of *John Stewart* and of *Joseph Bryan* against the tax collector, is in exact accordance with the case, and it must be held to completely decide these cases.

Reference might also be had, if necessary, to the case of *Eaton v. Calhoun*, decided by Judge Baxter, in *Flipper*, 2593, which is cited at length in Gen. Swayne's brief, now before this court.

But perhaps the most recent decision of authority is that of Mr. Justice Harlan, of the Supreme Court of the United States, in the Circuit Court for the District of Illinois, reported in the *Chicago Times* of June 15, 1883.

This was an information in chancery filed originally in the State court by the Attorney-General of Illinois against the Illinois Central Railroad Co., the City of Chicago, and the United States of America. The information asked for a decree in general affirming the right of the State to certain lands lying in the bed of Lake Michigan. The defendant railroad company removed the cause to the Circuit Court of the United States, and a motion was thereupon made to remand the cause to the State court.

In deciding this motion, Judge Harlan says:

"A careful analysis of the pleading shows (1) that the relief to which the State is entitled



depends in part upon the construction, operation and effect of Virginia's act of cession to the United States, and the acts of Congress creating the Territory and admitting the State of Illinois into the Union; (2) that the rights of both parties depend mainly upon the inquiry whether the act of the Illinois legislature passed in 1873 is in violation of those clauses of the Constitution of the United States to which reference has been made.

"It seems to the court entirely clear that, according to the adjudications of the Supreme Court of the United States, this is a case arising under the Constitution and laws of the United States.

"That it presents questions which may be determined without reference to the federal Constitution or of the laws of Congress, or that the federal questions upon which the case mainly depends are raised, not by the State which instituted the suit, but by the defendant company, is not material. In *Railroad Co. v. Mississippi*, 102 U. S., 140-1, it was ruled that the judicial power of the United States extends to suits by a State against an individual, in which the latter demands nothing from the former, but only seeks the protection of the Constitution and laws of the United States against the claim or demand of the State; that a case in law or equity consists of the right of one party as well as the other, and may properly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either; and 'that it is not sufficient to exclude the judicial power of the United States from a particular case that involves questions which do not at all depend on the Constitution or laws of the United States; but when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is within the power of Congress to give the circuit court jurisdiction of the cause, although other questions of fact or of law may be involved in it.'

"Did the act of 1869," Judge Harlan continues, "alone, or supplemented by its alleged acceptance on the part of the company, constitute a contract between the State and the company within the meaning of the contract clause of the Federal Constitution? If so, did the repealing act of 1873 impair the obligation of the contract, or does it, within the meaning of the fourteenth amendment, deprive the company of property rights without due process of law?"

"These questions plainly involve a construction of the Federal Constitution, and the rights of the parties so materially depend

on their determination that the court does not doubt that the case is one arising under the Constitution of the United States."

Here Judge Harlan says, that the question (1) whether there was a contract within the meaning of the Federal Constitution, and the question (2) whether that contract is impaired by the State repealing act, involves a construction of the Federal Constitution, and hence they constitute a case "arising under the Constitution of the United States."

In the present cases we have (1) the question whether the acts authorizing the issue of the coupons in question did or do constitute a contract—a question already explicitly decided in the affirmative by the Supreme Court in *Antoni v. Greenhow*, and the question whether the acts of the General Assembly of Virginia forbidding the receipt of coupons, and directing tax collectors to levy after tender of coupons do impair the said contract.

We have here, therefore, the exact questions which are declared by Judge Harlan to "constitute a case" arising under the Constitution of the United States, and hence cognizable in this court.

In *Manufacturing Co. v. Vulcanite Co.*, 13 Blatchford, 388, Mr. Justice Hunt says after citing the terms of the act of March 3, 1875:

"The jurisdiction of the federal courts, under the Constitution and laws of the United States, depends upon two points, first, as arising from the subject matter of the controversy; and, second, as dependent on the character of the parties. The act of 1789 made the jurisdiction of the circuit courts dependent on the character of the parties. The act of 1875 has altered this rule and given to that court jurisdiction in all cases in law and equity arising under the laws and Constitution of the United States.

In *Louisiana State Lottery v. Fitzpatrick*, 3 Woods, 222, it was held that the act of March 3, 1875, enlarged the jurisdiction of the circuit courts to the full limits authorized by the Constitution.

That a bill in equity charging that a contract was established by a legislative act of the State, and that this contract was impaired by a subsequent act of the legislature of the State, "disclosed a case arising under the Constitution of the United States of which the circuit court had jurisdiction, irrespective of the citizenship of the parties."

This case is in all respects parallel with the present cases.

In *Mayor v. Cooper*, 6 Wall., 253, Mr. Justice Swayne says:

"Nor is it any objection that questions are involved which are not all of a federal character. If one of the latter exist, if there be a single such ingredient in the mass it is sufficient. That element is decisive upon the subject of jurisdiction."

Judge Dillon, in his work on "Removal of Causes," lays down this compendious definition:

"There must be some question actually involved in the case depending for its determination upon the correct construction of the Constitution, or some law of Congress, or some treaty of the United States, in order to sustain the federal jurisdiction under the clause under consideration, namely, 'suits arising under the Constitution, laws or treaties of the United States.' Sec. 31, p. 40.

Other authorities to the same effect are: *N. O. Waterworks Co. v. St. Tam. Waterworks Co.*, 14 Fed. Rep., 194; *Sawyer v. Parish of Concordia*, 12 Fed. Rep., 754; *Connor v. Scott*, 1 Dillon, 242.

In *Sawyer v. Parish of Concordia*, 12 Fed. Rep., 754, the precise question of jurisdiction here involved arose.

The plaintiff sued the parish for a sum alleged to be due under a contract between plaintiff and the parish, which contract he alleges has been impaired by subsequent acts of the legislature of Louisiana.

Both parties being citizens of Louisiana, the defendant denied the jurisdiction of the court. The court says:

"The act of March 3, 1875, made some radical changes in the practice and jurisdictional powers of the circuit courts. . . . The State courts of course have ample power to try this case, or any other suits involving an interpretation of their statutes or constitution, and before the act of March 3, 1875, had original jurisdiction over such cases as this to the exclusion of the federal courts. . . . That act enables this court to try concurrently with the State courts all suits of a civil nature involving over five hundred dollars, 'arising under the Constitution and laws of the United States.' Now it is no longer necessary, in order to reach the federal court, that a suitor setting up any such right or privilege should begin his action in the State courts. Such a right, privilege or immunity makes up a federal question, and if his suit involves such a question, he may begin it in this court."

And the court held that it had jurisdiction.

In *N. O. Waterworks Co. v. St. Tam. Waterworks Co.* a bill was filed to protect com-

plainant's rights, by enjoining the defendant from further action in the premises.

The court here says:

"The case seems so narrow that the counsel have argued but two questions: (1) Has the court jurisdiction? (2) Does the Constitution of the United States protect the complainant against the repeal of its charter? The statement of the second question seems to dispense with argument as to the first. No question could more clearly show a matter in dispute 'arising under the Constitution of the United States.' And in such a dispute original jurisdiction is given the circuit courts of the United States by the act of March 3, 1875."

Attention is specially called to the exact definitions or limitations laid down in the foregoing cases, to the right to invoke the jurisdiction of this court.

Under the act of March 3, 1875, any case which involves a federal question, or in which such a question "forms an ingredient of the original cause," whether it is set up by the plaintiff or defendant, whether asserted as a right, or defense, or claim, or a protection, in whole or in part, is a case "arising under the Constitution of the United States," and is within the jurisdiction of this court, wholly, without reference to the citizenship of the parties.

The jurisdiction of the court under the act of March 3, 1875, depends on "the subject matter of the controversy," not on "the character of the parties."

Further, that the jurisdiction is not excluded by the fact that other questions are involved which have no relation to the Federal Constitution or federal laws, if only a federal question forms one element of the case which must be decided.

The fourth and fifth cases do not appear to the court to come within the scope of the act of 1875.

The amount of damages claimed in the fourth case named would not bring it within the jurisdiction of the circuit court, if there were no other objection, being but \$200, and is a mere action of trespass for damages, in which no question of a federal character is raised by the pleadings. The cause must be remanded to the State court from which it was removed. The fifth case is brought under the civil rights act, but does not in the judgment of the court, under the decision of the Supreme Court come within the scope of that act.

Orders will be passed in these respective cases in accordance with this opinion. We have to acknowledge our indebtedness to the

counsel who argued these cases for the excellent briefs filed herein, which have served to save us a great deal of labor in considering the construction of the act of 1875.

#### NOTES OF RECENT DECISIONS.

*Husband and Wife: Separate estate; purchase of property.*—A married woman who buys property on credit must not only show that she has a separate estate, but that the purchase was made on the credit of her separate estate, in order to hold the property against her husband's creditors. [Lochman v. Brobst. Pa. Chicag. L. N., Aug. 18.]

*Husband and Wife: Slander by wife; practice.*—In a declaration against a husband and wife for slanderous words spoken by the latter, an omission to aver that they were spoken in the absence of the husband, whether it be ground of demurrer or not, is cured by verdict. [Quick v. Miller. Pa., April 16, 1883. 40 Leg. Int., 320.]

*Infant: Tort; liability of parent.*—Where a boy is shot intentionally or carelessly by another boy with a shotgun loaded with powder, and fired off in the streets of a populous city, the parent of such boy is liable for the injury occasioned thereby. [Marrionneaux v. Brugier. La., Jan., 1883. 16 Rep., 208.]

*Married Women: Real estate; husband's debts.*—A built a house on his wife's land; the house and lot were exchanged for a farm, which was sold and the proceeds used in part payment for another farm, the title to all three pieces of land being in wife. A debtor seized upon hay cut upon the farm for a debt due for materials sold and delivered to A on his own credit to be used in building the house. *Held*, That the hay was not attachable on the husband's debt. [Ackley v. Furr. Vt., Jan., 1883. 16 Rep., 220.]

*Pleading: Assignment; amendment after verdict.*—In an action by the assignee of a debt, the complaint must contain an averment of such assignment, but where omitted and on trial, proof of such assignment is made, the court will allow the plaintiff to conform the pleading to the proof after a verdict for the plaintiff. [N. Y., L. E. & W. R. R. Co. v. McHenry. U. S. C. C., S. D. of N. Y. July 17, 1883. 16 Rep., 195.]

*Practice: Service; last day falling on Sunday.*—Where a statute requires process to be served out of the State, or by publication

within the State, within thirty days, and the thirtieth day falls on Sunday, service made or publication begun on the thirty-first day is a compliance with the statute. [Gibbon v. Freil. N. Y. Ct. App. 16 Rep., 181.]

*Real Estate Broker: Commission; practice.*—To entitle a real estate broker to recover commissions, he must establish his employment by previous authority or by acceptance of his agency and adoption of his act. [Twelfth St. Market Co. v. Jackson. Pa., April 16, 1883. 40 Leg. Int., 320.]

*Corporation: Receiver; right of pledgee of Stock.*—S. made a conveyance to C. of certain property, upon special trust, to secure the debts of S., and subsequently transferred to C. his stock in the Q. Co. as "pledge and collateral security," to secure the performance by S. of the conditions of the trust deed; after breach in the conditions of the trust deed, C. filed a bill in equity and asked that a receiver be appointed of the Q. Co., charging that the property of the company was managed and controlled by one not a stockholder, whose control was adverse to the interests of the creditors, whose management was impairing the value of the property, and through whom it had become impracticable for C. to sell the stock pledged for any sum commensurate with its just value. C. held in pledge nearly all the stock of the Q. Co., the balance of the stock being held by F. as administrator. *Held*, That C., though not technically a creditor, was, as pledgee of a majority of the stock for the benefit of the S. creditors to be considered as an equitable creditor, and as such was entitled to the protection of the court. *Held, further*, That the thing in litigation was in the view of equity not the stock itself, but the property of the Q. Co., represented by the stock: Chafee v. The Quidnick Company, 14 R. I.

### The Courts.

#### EQUITY COURT.—Justice James.

SEPT. 4, 1883.

Haliday v. Haliday. Sale finally ratified.  
McNamara v. Keyser. Auditor's report ratified.  
Clark v. Seibert. Same.  
Koonos v. Budd. Sale ratified nisi.  
Sage v. Sage. Same.  
Zug v. Bailey. Auditor's report ratified and distribution ordered.  
Bromer v. Heith. Sale ordered and W. H. Browne appointed trustee.  
Weggemann v. Weggemann. Sale ratified nisi and reference to the auditor ordered.  
Moses v. Waggaman. Testimony of non-resident witnesses ordered taken.  
Power v. Welsh. Sale ratified nisi.

Johnson v. Johnson. Appearance of absent defendant ordered.

Dallas v. Dallas. Sale ratified nisi and reference to auditor ordered.

Dayton v. Dayton. Sale ratified nisi and trustee directed to sell notes.

Speer v. Coyle. Auditor's report ratified.

Callighan v. O'Brien. Auditor directed to execute order of reference.

Yeabower v. Kengla. Auditor's report ratified.

Berry v. Thompson. Order appointing A. A. Birney guardian ad litem.

Atchison v. Muirhead. Rule discharged with costs.

SEPT. 5, 1883.

Boswell v. Boswell. Testimony ordered taken before B. T. Hanley.

Hockmeyer v. Neumeyer. Pro confesso against J. H. Neumeyer granted.

Barber v. Gilmore et al. Pro confesso against certain defendants.

National Mutual Insurance Company v. Tyler. Appearance of absent defendant ordered.

Mason v. Mason. Sale ordered and Eugene Carusi appointed trustee to sell.

Hockmeyer v. Neumeyer. Commission ordered to get answer of infant defendant.

In re William H. Zeph, lunatic. Auditor's report ratified.

Cornelin v. DeVaughn. Sale finally ratified and reference to the auditor ordered.

Jacques v. Jacques. Leave to file amended petition.

Smith v. Robinson. Order allowing W. B. Jackson and George J. Seufferle to intervene.

Willard v. Wylie. Auditor's report confirmed and sale ordered.

Young v. Young. Testimony ordered taken before B. T. Hanley.

Morrison v. Bayland. Testimony ordered taken before A. A. Brooke.

Berry v. Thompson. Title diverted and reverted to new trustee.

Riley v. Cox et al. Pro confesso against certain defendant.

Smallwood v. Lynch. Sale and report of auditor finally ratified.

SEPT. 6, 1883.

Middleton v. Middleton. Pro confesso.

Caldwell v. Huss. Same.

Dodson v. Dodson. Appearance of absent defendant ordered.

Stenzel v. Otterbach. Motion to dismiss denied and testimony ordered taken.

Stroth v. Miller. Sale confirmed and reference ordered.

Adams v. Adams. Sale ordered.

Martin v. Lewis. Injunction denied and bill dismissed.

Barbour v. Leddy. Auditor's report confirmed

Leddy v. Leddy. Same.

Claggett v. Brooke. Clerk directed to refund money.

Adams v. Cooper. Trustee appointed.

SEPT. 7, 1883.

Rodgers v. Rodgers. Charles Abert appointed guardian ad litem.

Dungan v. Ward. Judson T. Cull appointed trustee to convey title.

Offutt v. Rohrer et al. Pro confesso against all the defendants.

Utermehle v. District of Columbia. Title to sub-lot 2, square 448, vested in complainant.

#### CIRCUIT COURT.—Justice Mac Arthur.

SEPT. 5, 1883.

The following judgments by default were given: Copperman v. Kurzman, \$1,500; Plain & Co. v. Nichols & Co., \$1,200; Brien v. Pumphrey, \$598; Same v. Downing, \$100; Murphy v. Walsh, \$260.53; Waggaman v. Budd, \$311.08; Smith v. Moore, \$548.48; Harrison, Havemeyer & Co. v. O'Hare, \$1,466.30; Warren & Co. v. Bird, \$160; Emery v. Smith and Gloss, \$230; Hume, Cleary & Co. v. Banagan, \$203.14; Chilmer v. Darling, \$129.20.

### The Courts.

#### CIRCUIT COURT.—New Suits at Law.

SEPT. 1, 1883.

24718. Henry Braun v. Bartlett Thornton. Damages, \$5,000. Plffs atty, C. Carrington.

24719. William Neitz v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Plffs attys, Hine and Hagner & Maddox.

SEPT. 3, 1883.

24720. Bennie C. McQuay v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Plffs attys, Edwards & Barnard.

24721. Hillery Jordan v. David Tevine. Replevin. Plffs atty, F. O. Weaver.

24722. Michael Nash v. Edward Coleman. Plea of title. Lot 7, square 503. Plffs atty, E. D. Wright.

SEPT. 4, 1883.

24723. M. W. Galt, Bro. & Co. v. W. T. Fitzgerald. Note, \$155. Plffs atty, R. Tendall.

24724. Sarah F. Johnson v. Anthony Lully et al. Damages, \$2,000. Plffs atty, J. McD. Carrington.

24725. Charles R. L. Crown v. The Baltimore & Potomac R. R. Co. Damages, \$10,000. Plffs attys, Hine and Hagner & Maddox.

SEPT. 5, 1883.

24726. Ames & Frost v. Robert Vose. Account, \$65.50. Plffs atty, F. W. Jones.

SEPT. 6, 1883.

24727. Edward L. Scott v. Chas. W. M. Hubbell et al. Replevin. Plffs atty, L. I. O'Neal.

#### IN EQUITY.—New Suits.

SEPT. 3, 1883.

8684. Horace Jarboe v. John O'Neill et al. Creditors' bill. Com. sol., James Fullerton. Defts sols, J. T. Cull, E. H. Thomas and S. T. Drury.

SEPT. 4, 1883.

8685. Susan Turner v. Harry McGowan et al. For new trustee to convey. Com. sol., A. O. Richards.

8686. Anna Berry v. Elizabeth V. Thompson et al. To divest title. Com. sol., W. W. Boorman.

8687. Lyman H. Lamb v. The Baltimore & Potomac R. R. Company et al. To enjoin defendant's laying track, &c. Com. sol., Chas. A. Elliot.

SEPT. 5, 1883.

8688. Frank Lee v. The United Aid Association, No. 1. Injunction, &c. Com. sol., H. T. Wiswall.

8689. Mark H. Hopkins et al. v. William McE Dye. Injunction, &c. Com. sol., W. B. Barton.

SEPT. 6, 1883.

8690. Isabella Dodson v. James H. Dodson. For divorce. Com. sol., L. C. Williamson.

8691. Andrew J. Whittaker v. John P. Sampson et al. Judgment Creditors' bill. Com. sol., F. W. Jones.

SEPT. 7, 1883.

8692. Emma J. High v. Henry High. For divorce. Com. sol., A. A. Lipscomb.

8693. John B. Claggett v. Elias E. White. To construe certain deed. Com. sol., J. J. Johnson.

SEPT. 8, 1883.

8694. Mary Whelan et al. v. Mary McCarthy et al. To sell. Com. sol., W. P. Laselle.

#### PROBATE COURT.—Justice James.

SEPT. 7, 1883.

Estate of Mary Wilson, otherwise Mary Sayre, proof of publication filed; order appointing Rebecca Hinton administratrix on bond of \$1,400.

Estate of Catharine Ragan; order appointing Richard F. Harvey administrator on bond of \$600.

Estate of Catharine Boyd; final notice issued to Charles A. Walter, executor, appointing September 28, 1883, for settlement.

Will of James W. Smith fully proved by the three attesting witnesses.

Estate of Chas. L. Vertongen; order appointing Lucien E. C. Colliere administrator on bond of \$200.

In re Rachel A. Moore, guardian; order authorizing guardian to expend portion of principal.

Estate of Sarah Brown; will admitted to probate and letters of administration issued to Mary Virginia Brown on bond of \$100, and qualified.

Estate of John B. Ruth; will admitted to probate and letters of administration issued to Maria Ruth on bond of \$1,000.

In re Charles M. Stephens; petition of Mrs. J. M. Van Dewalter to be appointed guardian.

Estate of Margaret M. Whyte; letters of administration issued to Warren Whyte on bond of \$1,600.

Will of Ellen Doherty; filed, fully proven, admitted to probate and letters testamentary issued to John Doherty on bond of \$1,000.

### Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business, September 7, 1883.

In the matter of the Will of Josiah Curtis, M. D., late of the District of Columbia, who died at London, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Levi Curtis, of Philadelphia, Penn.

All persons interested are hereby notified to appear in this court on Friday, the 8th day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 36-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of September, 1883.  
THOMAS B. CRESLEY

LUCY J. CRESLEY.

On motion of the plaintiff, by Mr. J. A. Smith, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, A. D. 1883.

POWER ET AL. } Equity Docket No. 22. (Cause No. 8023  
V. WALSH ET AL.

Rutledge Willson, trustee, having this day reported that he made sale on the 7th day of July, A. D. 1883, of lot numbered (26) twenty-six of the recorded sub-division of original lots numbered (1) one, (2) two, (3) three, (4) four, (17) seventeen, (18) eighteen and (19) nineteen, in square numbered (511) five hundred and eleven, to Brainard H. Warner, for the sum of \$635 50, or 35 cents per square foot: It is, this 4th day of September, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 6th day of October, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said 6th day of October, 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. O. DuHamel, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

ELIZABETH H. DUHAMEL,  
W. K. DUHAMEL, Solicitor. 36-3

### Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

KATIE F. SAGE ET AL.

} Equity. No. 8477.

MARY E. SAGE ET AL.

John E. McNally and Edwin B. Hay, trustees, having reported that they have sold sub lot 14, in Hoffmans' recorded sub-division of original lot 2, in square 637, with the improvements thereon, in the city of Washington, District of Columbia, to Hugh Donohoo, for the sum of \$1,779:

It is, this 4th day of September, A. D. 1883, ordered, that the said sale will be finally ratified and confirmed on the 6th day of October, A. D. 1883, unless cause to the contrary be shown on or before said day.

Provided, a copy of this order be published once a week for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

FLORENCE B. KOONES ET AL.

} Equity. No. 7706.

PHOEBE A. L. BUDD ET AL.

Frederick Koones, trustee, having reported that he has sold part of lots 24 and 25, of Kennedy and Webb's subdivision (recorded of part of original lot one (1), in square No. 518, with the improvements thereon, in Washington City, District of Columbia, and particularly described in these proceedings, to Sue B. Ker, for the sum of \$685:

It is, this 4th day of September, A. D. 1883, ordered, that the said sale will be finally ratified and confirmed on the 6th day of October, A. D. 1883, unless cause to the contrary be shown on or before said day.

Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

EDA ANN DALLAS

} Equity. No. 8568.

OLIVER C. DALLAS ET AL.

The trustee in this cause having reported to the court that he has sold the real estate mentioned and described in these proceedings to Mary A. Murphy, and that the terms of sale have been complied with: It is, this 4th day of September, A. D. 1883, ordered, that the sale be ratified unless cause to the contrary thereof be shown on or before the 6th day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington once a week for three weeks before said 6th day of October next.

By the Court. CHAS. P. JAMES, Justice, &c.  
True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

MARY T. DAYTON ET AL.

} In Equity. No. 7801.

CORNELIA H. DAYTON ET AL.  
On consideration of the report of James M. Johnston, trustee, filed in this cause on this day: It is, by the court this 4th day of September, 1883, ordered, that the sale reported by him be ratified and confirmed unless cause to the contrary be shown on or before October 1, 1883. Provided, the usual notice be printed in the Washington Law Reporter for two weeks. It is, further ordered, that said trustee sell the notes to be given by L. P. Shoemaker and A. F. Fox, for the face value thereof and as proposed in said trustees' report.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding an Equity Court, the 4th day of September, 1883.

NICHOLAS WEGGEMENN

} No. 8575. Eq. Doc.

FRANCIS H. WEGGEMENN ET AL.  
Ordered, that the sales made and this day reported by John F. Hanna and Reginald Fendall, trustees for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 6th day of October, next. Provided, a copy of this order be inserted in some newspaper printed and published in said district once in each of three successive weeks before said day.

The report states that the south part of sub-lots 19 and 20, being 31 feet 3 1/2 inches front, sold for \$4,150; and that the north part, being 16 feet 8 1/2 inches front, sold for \$3,000.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of September, 1883.  
**THE NATIONAL UNION INSURANCE CO**

**v.** } No 8664. Eq. Doc. 23

**JOHN B. TYLER AND OTHERS.**

On motion of the plaintiff, by Mr. A. S. Worthington, its solicitor, it is ordered that the defendants, Albert O. S. Reiley, Thomas B. Bryan, Margaret Hetzel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice**  
True copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.

**PATSKY JOHNSON**

**v.** } No. 5688. Equity Docket 23.

**STEPHEN D. JOHNSON.**

On motion of the plaintiff, by Mr. R. B. Lewis, her solicitor, it is ordered that the defendant, Stephen D. Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.

**ALBION H. BROWN**

**v.** } No. 24,674. At Law.

**BRADLEY BARLOW.**

On motion of the plaintiff, by Mr. J. J. Weed, his attorney, it is ordered that the defendant, Bradley Barlow, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jonathan Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of August, 1883.

**JOSEPHINE E. TAYLOR,**  
**WASHINGTON DANENHOWER**

**FRANK T. BROWNING, Solicitor** 36-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans' Court Business. September 7, 1883.

In the case of Charles A. Walter, Executor, of Catharine Boyd, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 28th day of September, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 36-3 **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert E. Pywell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1883.

**EDWIN F. PYWELL,**  
**A. M. PYWELL,**

**ROBERT T. PYWELL,**

**E. D. WRIGHT, Solicitor.** 33-3 **Executors.**

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Grafton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of August, 1883.

**VIRGINIA A. GRAFTON.**

**RUTLEDGE WILLSON, Solicitor.** 36-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Nicholas Johnson, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of September next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Patrick Eagan, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Andrew Agan, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of George A. Heckel, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m. to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**

**GORDON & GORDON, Solicitors.** 35-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Carl Emil Worch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of August, 1883

CHRISTIAN WORCH.

CHARLES WALTER, Solicitor.

35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 31, 1883**

In the matter of the Estate of Erskine Gittings, deceased. Application for Letters of Administration on the estate of said Erskine Gittings, late of the United States Army, has this day been made by Samuel E. Gittings.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Asso. Justice.

Test: H. J. RAMSDELL, Register of Wills.

A. M. McBLAIR, Solicitor.

35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 31, 1883.**

In the matter of the Estate of Mary Powers Tuttle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John B. Dunning, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

JOHN J. WEED, Solicitor.

35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

SUSAN BROWN ET AL. )

Equity. No 8602

CHARLES F. BROWN ET AL. )  
The trustee, Samuel Maddox, having reported to the court that he has sold the real estate in the proceedings in this cause mentioned, to wit, the east thirty-five feet front by the full depth of original lot 6, in square 158, on the ground plan of Washington City, in the said District to Lawrence Sands, at and for the sum of \$4,681 24 and that the said purchaser has fully complied with the terms of sale:

It is, by the court, this 21st day of August, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of September, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

By the Court. A. B. HAGNER, Asso. Justice.

True copy. Test: 34-3 R. J. MASON, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 24, 1883.**

In the matter of the Estate of Samuel Kirby, late of Washington City, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil thereto and for Letters Testamentary on the estate of the said deceased has this day been made by Arthur B. Claxton, the sole executor therein named.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

APPELBY & EDMONSTON, Solicitors.

34-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bernhard Herens, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

MAGDALENA BERENS, Ex'x.

WARREN C. STONE, Sol'r.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business August 24, 1883**

In the matter of the Estate of John P. Millard, late of the city of Washington and District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Elizabeth Slyer, nominating James E. Waugh, as Administrator.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

E. A. NEWMAN, Solicitor.

34-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 17, 1883.**

In the matter of the Estate of Mary Wilson, otherwise Mary Sayre.

Application for Letters of Administration on the estate of said Mary Wilson otherwise Mary Sayre, of the District of Columbia, has this day been made by Rebecca Hinton.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

A. C. RICHARDS, Solicitor.

33-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Case, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1883.

33-3 IDA L CASE, Executrix.

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary G. Harris, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August, 1884 next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1883.

HANNA & JOHNSTON, Solicitors.

33-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Dennis Dunn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of August, 1883.

33-3 ANNIE DUNN.

# Washington Law Reporter

WASHINGTON - - - - - September 15, 1888.

GEORGE B. CORKHILL - - - EDITOR

IN FRICK'S APPEAL (4 Ohio Law Jour., 181), recently decided by the Supreme Court of Pennsylvania, a contract for the sale of certain land had been executed and before any money had become due thereunder, the land in question was seized and sold by the sheriff, upon a judgment obtained against the vendor prior to the contract of sale.

The amount realized at the sheriff's sale was more than sufficient to pay all the judgments against the vendor, and more than the whole sum the vendee had agreed to pay for the land, the excess was claimed by both vendor and vendee, and the court below ordered it to be paid to the vendee, on a finding by the auditor that he had not been guilty of any fraud in procuring the agreement.

The appellate court in affirming the decree of the court below, held that under the agreement the vendee, in equity became the owner of the land, subject to the payment of the stipulated price: that his right of property flowed from the contract and existed before any purchase money was paid (Siber's Appeal, 2 Casey, 178), that the vendor was no more entitled to the excess than if the equitable owner had sold his interest at private sale for a sum equal to that excess to one who took it charged with the payment of the amount due for the legal title and that in either case the excess was the measure of the value of the vendee's interest in the land (citing *Siber's Appeal*, *supra*; *Kerr et al. v. Day*, 2 Harris, 112; *Carson v. Mulvany*, 13 Wright, 88; *Smith & Fleck's Appeal*, 19 P. F. Smith, 474.)

THE number of patents issued during the first quarter of the present fiscal year is five thousand four hundred and forty. Last year, in the same period, the number was four thousand eight hundred and eighty-one.

Hon. Jeremiah S. Black.

At the meeting of the Pittsburgh Bar to take action on the death of the late Judge Black, the following appreciative tribute to the memory of the great Pennsylvania lawyer, was paid by Ex-Chief Justice Agnew:

MR. CHAIRMAN: I am glad your adjournment on Saturday has given me an opportunity of meeting with you in the expression of sorrow all feel for the death of an eminent citizen, a great lawyer, and an upright judge. I heard of it too late last week to express my regret for his death and sympathy for his loss.

My first personal knowledge of Jeremiah S. Black began in 1852, when holding a special court at Greensburg. It was just at a time when the controversy upon the statute of limitation leading to the overthrow of the opinions of Chief Justice Gibson, in *Waggoner v. Hastings* and cognate cases, jostled rudely the exalted admiration of Judge Black for the former chief justice, and caused his strong nature to rebel in a spirit of boiling indignation, so marked afterward in his dissent in the second case of *Hole v. Rittenhouse*. His effort then was to impress upon me the great injustice done to Judge Gibson. The profession, however, sustained Chief Justice Lewis. It was at the same court, q afterward told me with unction, I was about to commit him for contempt. Though myself not aware of the fact, as I was not introduced to him until evening, it seemed that, coming into the little old court room at Greensburg, he was talking outside the bar in his usual genial, but rather loud tone for a court room; and I ordered a tip-staff to silence that loud fellow outside.

Few men have filled a larger space in the minds of Pennsylvanians than Judge Black. As a judge he left his impress upon the jurisprudence of the State, in important respects. The great case of *Sharpless v. Philadelphia* set the current of judicial exposition of the constitution, which sustained the grand railway system of Pennsylvania, by means of municipal subscriptions to their stock. Antagonized as he was upon that important question by Lewis and Woodward, themselves eminent judges, and supported by Lowrie and Knox, his opinion was a model of clear statement, strong argument and lucid expression, and kept its place until a constitutional amendment superseded it. Later in life his opinions ran in a channel favorable to a wholesome restriction of corporate power; a doctrine adopted into the new constitution, and essential to the welfare of the State. In



the affairs of the United States he left a record equally lustrous. Called into the cabinet of the President in 1857, in the transition period of the Union, and running into the closing hours of an administration fated to be torn by elementary discord, sectional dissension and treasonable secession, he bore himself so "clear in his high office" that after a score of years had passed, and bright-robed peace had taken the place of war, he held a high and luminous place in the esteem of his countrymen. Yet this happy end was not reached except through years of painful silence, and a misconstruction which he bore with a virtue adding new lustre to his character. Few men could have suffered so long, under the severity of adverse opinion, to protect the reputation of an early, but severed friend. Happily vindication came before the end, to brighten the closing hours of an illustrious career, and in this respect, our only regret is, he had not lived longer to disperse fully the mists enveloping the hours of the nation's trial, when his patriotism reared a wall of defence against the machinations and assaults which threatened its life.

Judge Black was a true type of a class of men called from the middle walks of life, who, by the vigor of their intellects, varied acquirements and native energy, force their way to the highest positions, and command recognition, notwithstanding the absence of early culture and of the mere polish of urban training. Born on the 10th of January, 1810, of Scotch-Irish parentage, he partook of the rough, strong, manly, earnest and religious nature of that hardy race which peopled the western counties of Pennsylvania. He was a true representative in intellect, form and feature. The cast of his mind even surpassed the giant mold of his form, while his countenance portrayed the strong, bold qualities of his brain. His imagination, like the blows of a blacksmith's hammer, drove brilliant sparks from the heated mass, crushed by the ponderous strength of his logic.

He was a great lawyer, yet not great as some viewed him, but great in his knowledge of elementary principles, great in his conception of right, and grand in his masterly expression of his convictions. It was the greatness of vigorous thought, varied acquirements, keen perception, forcible utterance, and captivating style. But he was not great as a mere lawyer. Men far less able often surpassed him in research, and brought more logical connection and legal astuteness to the argument of mere legal questions. His real merit as a lawyer only was not seen so much in his speeches as in his writings, where his

concentrated thought and his combination of qualities, stores of learning, gems of literature, shaped by his favorite reading (the Bible and Shakespeare), cast themselves into molds which genius alone can form.

I shall not detain you longer, except to say, that his end bore witness to the earnest convictions and strong elements of his nature. A prayer to God for dying strength and for the welfare of a wife he loved with the strong throbbings of his heart, closed a life of virtue.

## Supreme Court District of Columbia GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

LOUISA E. STURGIS

vs.

LAVINIA H. HOLLIDAY ET AL.

Equity. No. 4,075.

{ Decided June 12, 1883.

{ Justices HAGNER, COX and JAMES sitting.

2. G. and W. held, as tenants in common, certain real estate in this District; W. died and his interest descended to his heirs. For a series of years G., and afterwards his personal representatives, paid the taxes on the moiety which descended to the heirs of W. On a bill filed for a partition or sale of this property, it was

*Held*, That the Statute of Limitations might be pleaded to the claim of G.'s representatives to be reimbursed from the fund for the taxes paid by them and their testator G on W.'s moiety of the estate.

2. Claims by trustees against heirs to be reimbursed for taxes paid on the inheritance, and resting upon peculiar facts, stated and decided by the court.

THE CASE is stated in the opinion.

G. W. COOPER for heirs of W. G. Ewing.

I. G. KIMBALL for Holladay.

Mr. Justice COX delivered the opinion of the court.

This is a bill filed for a sale and partition, &c.

In May, 1853, William G. and George W. Ewing, brothers, and co-partners in Indiana, bought lot 22 and part of 20 in subdivision of square 327 in Washington, taking the conveyance in both their names, as tenants in common.

In June of the same year George W. Ewing bought square 862 in his own name, but with partnership funds and for the benefit of the partnership.

William died first, having made a will which

was inoperative in the District of Columbia. George, his brother, inherited one-sixth of his intestate property here, and thus became entitled to seven-twelfths of the property owned jointly. George managed the common property, paying taxes and expenses on it until his death in 1866.

George left a will by which he devised certain property to his executors, as trustees to pay the income only to his children, who were his heirs-at-law, and then gave it over after their deaths. He also directed these executors, out of personal estate, or sale of certain real estate situated in the States, to pay taxes on all the testator's lands and all other necessary expenses of protecting any of the property of which he might die seized. The residue of his estate was given to his children. This will, for want of proper attestation, was inoperative in this District.

The present bill is filed by Mrs. Sturgis, one of the heirs of William G. Ewing, against the other heirs of William and those of George, to sell the Washington property for distribution of proceeds. In the seventh clause of the bill she asks that the share of each heir be paid, after the repayment to the estate of George W. Ewing of the taxes paid by it on the same.

Before the auditor a large claim was presented by Jesse Holliday, present trustee under the will of George W. Ewing, for reimbursement of taxes paid by George W. Ewing in his lifetime and by his executors and trustees after his death. This was audited, and exceptions to the auditor's report filed. The present appeal is from the decree sustaining or overruling those exceptions.

The only controversy before us is, what allowances for taxes should be made, and to whom. The first claim relates to taxes on William's share of the property. The auditor distinguishes between the property in square 327 conveyed to both the brothers, and that in square 862 conveyed to George alone. As to the former, he holds that the legal title to a moiety descended to William's heirs, and if George, or his representatives paid the taxes on it, this, if not a mere voluntary payment, giving no right of recovery at all, at least gave them no lien on the land, but a mere right of action, to which the statute of limitations might be pleaded at law or in equity, and this defense, which is made on the part of William's heirs, is sustained.

But as to square 862, of which the legal title was in George, he holds that George, being a trustee for his brother as to a moiety, the heirs of William cannot assert their equitable claim to it without reimbursing his

estate for his proper outlays in protecting the trust property.

Holliday, the present trustee of George's estate, excepted to the auditor's ruling in respect to square 327, but the court overruled his exception. As inequitable as the defense of limitations seems to be in such a case, we do not see how it can be avoided, and must hold the exception to be properly overruled.

The claim for taxes paid upon William G. Ewing's share of square 862, divides itself into several parts.

The first is for taxes paid by George W. Ewing in his lifetime. This was allowed by the auditor. It was excepted to on the ground that it was included in a settlement of partnership affairs made between George W. Ewing and the administrators of William with the will annexed, in 1865. The court sustained this exception to the auditor's report.

We think the court erred in this respect, and that the evidence does not show this item to have been included in the settlement, but that, on the contrary, it was excluded, because the will not operating as to Washington property, the administrators with the will annexed did not feel authorized to allow it against the testate property which alone they represented.

As to the rest of the claim, *i. e.*, for taxes paid by the executors and trustees, exceptions were filed by William's heirs, on several grounds, *viz.*: one, that Holliday, as to this claim, is not properly before the court; another, that the claim is barred by the statute of limitations, and, thirdly, that if it is to be allowed to any one, it should be to the heirs of George, and not to the trustees appointed under his will.

The court rightly, as we think, overruled or ignored the first two points; it, however, sustained the third, and in this last ruling we think there was error. It has been already seen that the trustees under the will of George had a different interest from that of his heirs. They hold in trust, it is true, to pay the income to the heirs during their lives, but as to the principal of the estate, for other parties. Their property was a different fund from both the residue devised to the heirs and the intestate property descended to them. The taxes paid on the Washington property was not paid by the heirs, but from the trust fund now represented by Holliday. If they are repaid, they ought to go back to the same fund. That fund ultimately is for the benefit of parties not the immediate heirs, and any reduction of the fund on which a claim could be founded, can only be repaired by restoring

the money paid to the same fund.

The legal title descended to the heirs, and if they had paid the taxes, they, as trustees, would have been entitled to reimbursement. But the person from whom it descended provided in his will, as we shall further see, for payment of those taxes out of another portion of his estate, and to that portion we think they to be restored.

The next part of Holliday's claim relates to taxes paid on George W. Ewing's interest in the Washington property.

First, as to taxes paid by George in his lifetime. There is not the slightest foundation for this claim. It is equivalent to demanding from a man's heirs taxes paid by their ancestor on descended property, for the benefit of executors, as if a man had a money claim on his own real estate for his outlays on it, which passed to his executors. The payment of taxes, of course, simply extinguished them as an encumbrance, and the property descended free from them.

As to the taxes paid by the executors and trustees, the will made it their duty to pay these taxes on all property of which the testator might die seized. As to that which was not included in the trust, but in the residue devised to his heirs, this direction was clearly for the benefit of his heirs. The testator may have supposed that his will was in force in the District of Columbia, and that the property here passed under the residuary clause. The failure of the will in this respect makes no difference. The property descends just as the testator probably supposed that he had devised it, and this direction in the will, as applied to this property, only carries out his general design. It was the duty of the trustees to pay off these taxes, not to assume them as a lien on the property to be reimbursed to them out of it; and Holliday has no claim for these taxes. His exception to the auditor's report in this respect was rightfully overruled. So, we think, were his fifth and sixth exceptions.

The case is remanded for corrections in the account in conformity with this opinion.

THE word "Samaritan" cannot be made a trade-mark for medicines, as in the combination "Samaritan's Root and Herb Juices," according to the opinion of the Pennsylvania Supreme Court in Desmond's appeal, decided on the 16th ult. The court said that the appropriation of the word "Samaritan" in one combination of words would not prevent its being used in all other combinations.—*Bradstreet's*.

# Supreme Court of Indiana.

## PERCELL vs. ENGLISH.

From the Marion Circuit Court.

1. Where a stairway connected with the apartments hired in a tenement house, occupied by several tenants, is rendered unsafe by temporary causes, such as the accumulation of snow and ice, the landlord is not liable to the tenant who uses such stairway with a full knowledge of its dangerous condition, unless there is a contract on the part of the landlord to keep the premises in repair and fit for safe use.
2. The fact that premises are hired out in apartments to separate tenants, and that their common stairway is the common passageway of all, will not change the principle upon which rests the landlord's immunity from the burden of repairing, nor the effect of the contract by which the premises are demised.
3. A promise to repair, made after the lease is entered into, is a mere *audum pactum*, and no liability exists on the landlord's part for a failure to make such repairs.

ELLIOTT, J.—The case made by the appellant's complaint, shortly stated, is this: She was the tenant of the appellee, having leased rooms in the upper story of a building owned by him; the approach to these rooms was by a stairway common to the use of all the tenants of the building; the railing of the stairway had been suffered to get out of repair, and was rotten and loose; the stairway became dangerous and unsafe from ice and snow which covered the steps; the appellant, in attempting to descend, slipped, and in falling caught the railing, which gave way, and she fell to the pavement and was seriously hurt. It will be observed that the complaint does not allege that the landlord had contracted to repair, but proceeds entirely on the theory that the duty rested upon him independently of contract.

The court, upon the close of the appellant's evidence, directed the jury to return a verdict for the defendant. The court may, there is no doubt, direct the jury to return a verdict in favor of the defendant in a proper case: *Washer v. The Allenville, etc., Co.*, 81 Ind., 78; *Weis v. The City of Madison*, 75 Id., 241; *Haggard v. Citizen's Bank*, 72 Id., 18; *Dodge v. Gaylord*, 58 Id., 365; *Pleasants v. Fant*, 22 Wall., 116.

When the cause of action declared on is negligence, the court may direct a verdict for the defendant, in cases where the evidence wholly fails to make out a *prima facie* case. It is true that the question of negligence is generally one of mingled law and fact, but there are cases where the question is purely one of law. *Binford v. Johnston*, 82 Ind., 426. Where there is no dispute as to the facts, and no controversy as to the inferences that can

be legitimately drawn from them, the question is one of law, and the court may rightfully take the case from the jury: 2 Thomp. on Neg., 1,236, 1,237; Thomp. Charging the Jury, 23; Toomey v. London, etc., 3 C. B. N. S., 146.

The right of the court to withdraw the case from the jury, unquestionably exists in cases where negligence is the issue, as well as in other cases; but whatever may be the character of the issue, the case cannot be taken from the jury, if there are any facts proved from which the jury would by fair and reasonable inference be authorized to find for plaintiff. All reasonable inferences, not, however, forced and violent ones, are to be indulged in favor of the plaintiff on such a case, for the rule is substantially the same as that which obtains in cases where there is a demurrer to the evidence: Hazzard v. Citizens' Bank, 72 Ind., 130; Steinmetz v. Wingate, 42 Id., 574; Wilcuts v. Northwestern, etc., Co., 81 Id., 30; Fritz v. Clark, 80 Id., 591. If the evidence given upon the trial of this cause, can by fair intentment or reasonable inference be deemed to make out the cause of action declared on, then the appellant is entitled to a reversal. It is not sufficient even upon a demurrer to the evidence, that the plaintiff make out some cause of action; but it is incumbent upon him to make out the cause of action set forth in his complaint. He cannot declare on one cause of action and recover on another. There is in this complaint no allegation that the appellee had agreed to keep the demised premises in repair, and even if a contract had been proved, it is doubtful whether the appellant could have been allowed to succeed on the theory that there was a contract. But waiving this point, and going to the evidence, we are clear that no contract was proved. The utmost that can be claimed is, that the evidence tends to show a voluntary promise, made after the contract for the letting of the premises, had been entered into. This evidence did not establish, nor tend to establish, a contract on the part of the landlord to repair; for it did no more than show a mere gratuitous promise creating no binding obligation. The rule upon this subject is thus stated in a recent work: "A promise to repair, made after the lease is entered into, is a mere *nudum pactum*, and no liability exists on his (the landlord's) part for a failure to make such repairs." Wood's Landlord and Tenant, sec. 382; Libbey v. Tolford, 48 Me., 316; Gill v. Middleton, 105 Mass., 477; S. C., 7 Am. Rep., 548; Doupe v. Genin, 37 How. Pr., 5; S. C., 45 N. Y., 119.

The case is, therefore, to be treated as one

in which there is no contract on the part of the landlord to repair.

Where there is no duty, there can be no actionable negligence: Cooley on Torts, 659; Add. on Torts, sec. 28; Whart. on Neg., sec. 3. In cases of the class to which the present belongs, three of the essential things which the plaintiff is required to establish, are the existence of a duty, that it is owing to him, and that it has not been performed. The material part of the appellant's case could not be made out without showing a duty owing to her from her landlord, to keep the demised premises in repair. The duty of the landlord to repair does not arise out of the relation of landlord and tenant; on the contrary, the relation devolves that duty upon the tenant. It is only where the landlord contracts to maintain the premises in repair that he is burdened with that duty. The logical conclusion from this principle, and a more firmly settled one there is not in all the books, is that a landlord not under contract to repair, is not, as a general rule, responsible to the tenant for injuries caused by a defective condition of the demised premises. In a carefully written article in the *American Law Review*, the authorities are reviewed, and the rule deduced that there is no warranty, express or implied, as to the condition of the demised premises, and that the tenant must determine for himself the safety and fitness of the premises for use and occupancy: 6 Am. Law Rev., 614; Taylor on Land. and Tenant, 6th Ed., 381. This is the rule adopted by our own cases: Estep v. Estep, 23 Ind., 114, *vide* authorities, cited, p. 116. Ordinarily, therefore, a tenant who leases property takes upon himself all risks, except, perhaps, as against latent defects not discoverable by the use of ordinary diligence, and cannot recover damages from his landlord because of an omission to make the premises habitable or safe. Whether a tenant would have a right to abandon the premises, if the means of access to them had become unsafe and dangerous, is not here the question. The question here is, whether the tenant continuing in possession and making use of the premises, can recover damages for personal injuries, caused by the unsafe condition of the means of ingress and egress? There are cases, we may remark in passing, holding that even where the landlord covenants to make repairs and fails to do so, the tenant must, where the expense is not great, make them and charge them against the landlord: Cook v. Soule, 56 N. Y., 420; Loker v. Damon, 17 Pick., 284; Miller v. Mariner's Church, 7 Me., 51; Benkard v. Babcock, 2 Rob., 175. The duty of the ten-

ant to keep in safe condition for his own use, the demised premises extends to all the appurtenances connected therewith, and this includes steps, stairways, and other approaches. Whatever passes to the tenant under the lease is, for the term designated, under his control and in his possession: *Pomfret v. Ricroft*, 1 Saund., 5th Ed., 521; *Wood. on Land. and Tenant*, sec. 213; *Auth. n.* 371. If he neglects to make repairs, and suffers the premises to become unsafe, it is clear that in ordinary cases, at least, no action will lie against the landlord for injuries suffered by the tenant, and caused by the unsafe condition of the premises, arising from the neglect to repair. It is obvious, from this statement of fundamental principles, that in cases of an ordinary tenancy, the tenant cannot maintain an action against the landlord for injuries caused by the neglect to repair the demised premises, unless the landlord has expressly covenanted to repair.

If the appellant can maintain this action, it must be because her case possesses some elements which carry it out of the general rule. The only element in this case, which can with any plausibility be said to distinguish it from ordinary cases of tenancy, is that the landlord hired out apartments to separate tenants, and that their common stairway was the common passage for the use of all. It is difficult to perceive how this fact can exert a controlling influence on the question of the landlord's liability, for, whether the premises are demised to one or to many tenants, the principle upon which rests the landlord's immunity from the burden of repairing, is not changed, nor does it change the effect of the contract by which the premises are demised. As said by a writer already referred to: "For a tenant is at once a bailee and a purchaser; he is a bailee because of his ownership being determinable and not absolute; yet being exclusive while it lasts, he is, by the mere fact of the demise, and in the absence of special undertakings to that effect, charged with a trust to restore the property in substantially the same condition as when he took it." 6 *Am. Law Rev.*, 614. It would seem clear, on principle, that the landlord's duty is the same whether he demises to one or to many tenants, so far as concerns his liability to a tenant for personal injuries caused by a failure to repair. In *Humphrey v. Wait*, 22 *Upper Canada, C. P.*, 580, the plaintiff had hired apartments of the defendant in a building occupied in part by other tenants, and sustained injuries by stepping through a hole in the floor of a common passageway leading to the apartments, and it was held that an action could

not be maintained against the landlord, and a non-suit was directed. In the course of the opinion, delivered in that case, *Hagarty, C. J.*, said: "It would be a singular state of the law, if a landlord would not be answerable if he demised the stairway with the upper story, and would be answerable if he only gave a right to use the part of the house actually demised." In *Gott v. Gandy*, 2 E. & B., 845, *Lord Campbell* said: "Now let us see what are the facts alleged. They are these: the defendant was the landlord of the premises which were let to the plaintiffs from year to year; during the tenancy the premises were in a dangerous state for want of substantial repairs; the defendant had notice from the plaintiff, and was requested to repair them, and did not do so. There is no allegation of any contract to do substantial repairs. It lies, therefore, on the counsel of the plaintiffs, who are the actors, to establish on authority or on principle, that this obligation results from the relation of landlord and tenant. Mr. Russell can produce no authority in his favor, not even a dictum. And I have heard of no legal principle from which it would follow that the landlord was bound to repair the premises."

In *Cartairs v. Taylor*, L. R., 6 Ex., 216, the doctrine was carried to the extent of holding that there is no liability on the part of the landlord, who, himself, occupied a part of the premises, unless it is shown that he was negligent with respect to the particular act which caused the injury. The English cases agree in holding that for injuries for a failure to repair, no action will lie by the tenant against the landlord: 1 *Add. on Torts*, 240; *Smith on Land. and Tenant*, 206; *Robbins v. Jones*, 15 C. B., N. S., 221; *Payne v. Rogers*, 2 HL, 350.

Turning to the American authorities, we find in one of our books this statement of the rule, whether too broad or not we need not stop to inquire: "The liability of the landlord exists only in favor of persons who stand strictly upon their rights as strangers." *Sherman and Redf. on Neg.*, sec. 503. Another author says: "An owner, being out of possession, and not bound to repair, is not liable in this action (i. e., for nuisance), for injuries received in consequence of his neglect to repair." *Whart. on Neg.*, sec. 817. In still another work it is said, in speaking of a landlord's liability: "Nor in the absence of a covenant to repair, is he liable for injury for the faulty construction or condition of the premises, the control over which is in the hands of a tenant, either to a tenant or third persons." *Wood. on Land. and Tenant*, sec.

384; 1 Thomp. on Neg., 323. In 14 How. Pr., 163, the action was for injuries received from falling down a stairway forming a common passageway, by one tenant occupying part of premises also occupied by other tenants of the same landlord, and it was held that no action could be maintained. The same general principle is declared in the cases of Doolittle v. Howard, 3 Duer, 464; Robbins v. Mount, 33 How. Pr., 24. In Kaiser v. Hirsh, 46 How. Pr., 161, it was held that an owner who occupied a part of the house was not liable for an injury to a visitor to one of his tenants, unless it was shown that his (the landlord's) negligence was the cause of the injury, and that the fact that he occupied a part of the premises, created no presumption against him; a like doctrine is declared in Moore v. Goedel, 34 N. Y., 527. The Supreme Court of California held, in the case of Loupe v. Wood, 51 Cal., 586, that there was no liability on the part of the landlord, arising from the defective condition of the walls of the cellar.

We have examined the cases cited by the appellant, and do not find any of them in point. The cases in the Georgia Reports are not in point, because they are founded upon an express statute, making it the duty of the landlord to repair. The cases of Godley v. Hagerty, 2 Penn. St., 387, and House v. Metcalf, 27 Id., 600, were actions by the stranger, and are, therefore, not in point.

Fisher v. Thirkell, 21 Mich., 1; S. C. 4 Am. Rep., 422, is against rather than in favor of the appellant. In that case the landlord was held not to be liable to one who suffered an injury by falling through a scuttle in a sidewalk adjoining premises in the possession of a tenant. The other case cited, Shindleback v. Moon, 32 Ohio St., 264; S. C., 30 Am. Rep., 584, is also against the doctrine maintained by counsel. In that case the injury was occasioned by the accumulation of ice upon steps leading into a storeroom owned by defendant, but occupied by a tenant; and the holding was that the landlord was not liable for injuries sustained by a stranger. In closing the opinion, it was said: "And again it was the ice that occasioned the accident. It is not averred that it was the duty of the landlord to remove this ice, nor does it appear that he was called upon to do it. If this ice was a nuisance to the passing public, endangering their lives and limbs, it was a nuisance arising during the continuance of the lease. It was a thing temporary in its nature, a defective condition of things such as the tenant was called upon to remedy, and not the landlord, as between landlord and tenant,"

We have in our investigation found one case which lends support to the general doctrine for which appellant's counsel contend. The case to which we refer is that of Looney v. McLean, 129 Mass., 33; S. C., 37 Am. Rep., 295. In that case the wife of the tenant of a part of a tenement house, occupied by several families, was injured by the giving away of one of the steps of the stairway leading to the roof of a shed in common use by the tenants for the purpose of drying clothes; and it was held that an action would lie against the landlord. The question is not discussed, and only cases from Massachusetts are cited, and they do not decide the point. On the contrary, such of them as apply to the relation of landlord and tenant, recognize the rule that the landlord is not liable to the tenant for a failure to repair. Two of them do not touch upon the subject of a landlord's liability. One of the two is upon the question of the liability of a railroad company, which constructs a passageway across a public street, and the other is upon the same general question. But conceding the soundness of the ruling in that case, it does not apply to the case at bar, for here the cause of the injury was not the defective construction of the stairway, or its unsafe condition at the time the premises were leased. The stairway here is directly connected with the part of the premises leased to the appellant; in the Massachusetts case it was otherwise. Here the thing which made the stairway unsafe was the temporary covering of snow and ice. While in the Massachusetts case, the unsafe condition was permanent, and had long existed.

It is not necessary for us in the present case, to lay down any general rule upon the subject of a landlord's liability to a tenant occupying apartments in a tenement house occupied by other tenants. It is sufficient for us to ascertain and state a rule governing cases, such as that made by the evidence before us. We are satisfied the authorities warrant us in adjudging that where a stairway connected with the apartments hired in a tenement house, occupied by several tenants, is rendered unsafe by temporary causes, such as the accumulation of snow and ice, the landlord is not liable to the tenant who uses such a stairway, with a full knowledge of its dangerous condition, unless there is a contract on the part of the landlord to keep the premises in repair and fit for safe use. Any other rule would entail upon landlords a grievous and unjust burden—cast upon them a duty which long settled rules has imposed upon the tenants, and which results in imperiling

the interests of an owner out of possession and relieving those in possession of his property from that care which the law imposes upon bailees and others occupying analogous positions. If any other rule is adopted, then the owner is charged with the duty of watching steps leading to every part of the premises, and in keeping them free from all temporary obstructions. For let it once be granted that the landlord is liable for obstructions or defects not permanent and not growing out of the character of the structure, it will be impossible to draw any line, and he must be held accountable for all obstructions or defects, no matter how transient their character. Whether a landlord hiring apartments to many tenants is liable for latent defects, or for faults in the construction, or for permanent defects in the common passage-ways, we do not decide. The evidence before us shows that the ice and snow made the stairway unsafe and caused the accident. But for the ice and snow, which the tenant could have removed with very little labor, or at a trifling expense, the appellant could have used the stairway in perfect safety. We are satisfied that the court below was right in holding that the cause of the accident was the accumulation of the ice and snow upon the stairway, and that for an injury resulting from such a cause, a landlord who had no covenant to repair is not liable.

Judgment affirmed.

Supreme Court of Pennsylvania.

SHOEMAKER v. STILES.

*Attorney and Client: Confidential Relations; Practice; Rules of Court as to Depositions.*

The relation of attorney and client gives rise to great confidence, and the attorney is presumed to have the power to strongly influence his client, and to gain by his good nature and credulity, and to obtain undue advantages and gratuities. Hence the law often declares transactions between them void which between other persons would be unobjectionable. Unless the transaction is fair, it is deemed a constructive fraud.

If an attorney fraudulently claims the right to retain out of the money of his client a larger sum than the jury find to be just, he forfeits all claim to any compensation.

A receipt is only *prima facie* evidence.

Courts have power to make rules respecting the filing of depositions, and cannot be reversed for enforcing them.

ERROR to the Court of Common Pleas of Lehigh county.

In a suit between the plaintiff's decedent and the Lehigh Valley Railroad Company, December 23, 1869, a verdict in favor of the plaintiff was had for \$5,118.90. March 23, 1871, this verdict and its interest, in all,

\$5,502.81, was paid to Mr. Stiles, the plaintiff's counsel, and also costs of witnesses, \$161.40, were paid to the prothonotary of Bucks county. On the—day of March, 1871, Mr. Saeger, the plaintiff's decedent, went to the office of Mr. Stiles, and was paid \$4,302.81, leaving a balance of \$1,100 in the hands of Mr. Stiles; Mr. James, of Bucks county, was associate counsel at trial; this balance was retained pending the settlement of fees, costs, &c., upon the allegation of Mr. Stiles that witnesses were unpaid, and that he was in need of money. Mr. Saeger, running through a period of six to eight months, called repeatedly upon Mr. Stiles for full settlement, but he was postponed under the pretext that the fees of Mr. James had not been paid, and that the costs were still unsettled. These facts were offered to be proven by the deposition of Mr. Saeger. In the meantime, Mr. Saeger paid his witnesses, and the \$161.40, bill of costs for plaintiff's witnesses, remained with the Prothonotary. Mr. Stiles procured an order from Mr. Saeger to draw these costs, and sent the order for costs to Mr. James, and who, by the direction of Mr. Stiles, but without authority from Mr. Saeger, drew them and retained them as fees; thus the attorneys had in actual cash \$1,261.40 of their client's money, and after deducting fees, the balance was due the plaintiff's decedent. Mr. James was paid a retainer of \$50, and Mr. Stiles also \$50 at the same time, for which Mr. Saeger gave Mr. Stiles a note of \$100.

When the \$4,402.81 was paid, Mr. Stiles made a statement as follows:

"William Saeger v. Lehigh Valley R. R. Co. In Common Pleas of Lehigh and Bucks counties.

December 23, 1869, verdict. . . \$5,118 90

Interest from December 23, 1869, to

March 23, 1871. . . . . 383 91

\$5,502 81

Deduct fees, etc. . . . \$1,000 00

Note . . . . . 100 00 1,100 00

\$4,402 81

Received the above sum of \$4,402.81 in full as above.

WILLIAM SAEGER."

At the trial this receipt was proven and admitted in evidence, and was held to be conclusive by the court, and the jury was instructed to find for the defendant, if they believed Saeger had signed the receipt.

Opinion by TRUNKEY, J. April 16th, 1883.

By itself, the receipt in *prima facie* evidence that Saeger consented to the deduction of \$1,000 by the defendant for his service; but if

is by no means conclusive. A receipt is like any other parol admission of the party, and is open to explanation or correction, and he may show that it was made by mistake, or does not exhibit the real state of facts: *Russell v. Church*, 65 Pa. S., 9; *Wharton on Con.* § 938. The parties were attorney and client. That relation gives rise to great confidence, and the attorney is presumed to have the power to strongly influence his client, and to gain by his good nature and credulity, and to obtain undue advantages and gratuities. Hence, the law often declares transactions between them void, which between other persons would be unobjectionable. Unless the transaction is fair and conscionable, it is deemed a constructive fraud. This long-established rule applies to this case, even if the receipt is taken as evidence of a settlement of the amount of fees for the services in the judgment therein recited. More than eighteen per centum was deducted for fees, and the plaintiff, in the first place, must show that the sum retained is larger than the services of the defendant were reasonably worth, or larger than agreed upon if there was an express contract. If he does, then the burden is cast upon the defendant to prove to the satisfaction of the jury that the sum was retained by his client's agreement, under circumstances that made it fair and conscionable. When there is a dispute respecting the amount of fees, and the attorney acted in good faith, his right to compensation is not forfeited, should the jury find that he is entitled to a less sum than he claimed. But if he fraudulently claimed the right to retain out of the money of his client, a larger sum than the jury find to be just, he forfeits all claim to any compensation whatever: *Balsbaugh v. Fraser*, 19 Pa. St., 95. The testimony of Mr. James was sufficient to warrant a finding by the jury that the defendant contracted with Saeger to conduct the suit against the Lehigh Valley Railroad Company for ten per centum of the amount recovered; also, that James contracted for a contingent fee for services in the same case of \$500. After the date of the receipt, the defendant wrote an order in favor of James, which Saeger signed, for the costs, amounting to \$160.40. James received the costs, but nothing from the defendant, except letters containing, among other things, urgent directions to draw the costs, and not pay a cent to the witnesses or Saeger. These letters tend to show the manner of dealing between the parties, and Saeger's dissatisfaction. The evidence ought to have been submitted to the jury, and considered in connection with the

fact that the parties held the confidential relationship of attorney and client. It is now immaterial whether the defendant could rightfully have paid out of money in his hands James' fee; he did not. The first and sixth specifications of error must be sustained.

Courts have power to make rules respecting the filing of depositions, and cannot be reversed for enforcing them. Rule No. 87 is reasonable, and not inconsistent with any statute. There are good reasons for requiring promptness in the filing of depositions and it is incumbent on the party at whose instance they are taken, to see that they are filed in time. If it be conceded that the court below could properly have directed the depositions to be filed *nunc pro tunc*, there is not ground shown for reversing the order refusing the motion.

Judgment reversed, and *venire facias de novo* awarded.

#### Discovery before Trial.

*City Court—Special Term.—Decided August 25, 1883.*

JOHN DICKIE v. ROBERT F. AUSTIN AND OTHERS.

*Discovery of books to prepare for trial when refused.*

MCADAM, J.—The plaintiff claims that he was to receive one-third of the gross profits on certain sales made by him for the defendants. These sales are said to aggregate \$264,343.58. It appears that settlements were had from time to time on statements furnished by the defendants. But the plaintiff now insists that, in these accounts, the defendants unlawfully deducted from his share of the profits "certain sums," which, he claims, he should have received, but did not. This action was brought to recover those sums, which the plaintiff supposes aggregate about \$2,000. The present application is for an inspection of the sales books used by the defendants between May 1, 1880, and May 1, 1883, as well as the ledgers used during that period, wherein the plaintiff's account was kept, and in which the merchandise and sales accounts were entered. The object of the inspection is to enable the plaintiff to prepare for the trial of the action. The petitioner says, that "he is unable to name specifically all the books which will be necessary," and the inspection is intended to cover any books which the defendants have relating to the transactions in which the plaintiff was interested. I need not say that such a discovery is unusually broad and sweeping, and not such as courts are in the habit of granting in aid of common law actions for the recovery of a



specific sum of money. Such applications are, as a rule, referred to courts of equity, (1 Sandf., 700). The character of the application, and the general manner in which the alleged indebtedness is expressed, as "certain sums" amounting to "about" \$2,000, indicate, in a mild way, that the plaintiff does not really know whether he has a cause of action or not, and that a discovery before the trial is therefore material to enable the plaintiff to determine how to prove his cause of action, if it can be proved at all. In this view, the application is a prudent one for the plaintiff to make; but it does not follow, from this circumstance, that it ought, in the exercise of a wise discretion, to be granted. There are certain general rules which regulate applications like the present, one of which is that the petition must state what information is wanted, and that the books referred to contain such entries, (19 Abb. Pr., 111; 44 Barb., 39). It is not enough to show that they probably will furnish the desired information (26 How., 177), and an application for the discovery of documents was denied, where the petition did not point to the places where the information sought for existed, nor describe the entries except by stating their supposed effect (55 How. Pr., 351). In *Cutter v. Pool* (3 Abb., N. C., 130), a case somewhat like the present, the court denied the application, leaving the plaintiff to procure whatever books he required upon the trial by the ordinary process of *subpoena duces tecum*. In 12 Leg. Obs., (at p. 137), it was said: "If the discovery is plainly attainable by competent and available testimony, a production of books should not be allowed without special circumstances."

The only special circumstances which appear in this case, are those before mentioned, and these do not bring the case within any rule which justifies me in granting the relief applied for. It follows that the application must be denied, with \$10 costs to abide the event.—*N. Y. Daily Register*.

#### Supreme Court of Missouri.

##### STATE v. EMERY.

It is culpable negligence to brandish a loaded revolver in a saloon, whereby the lives of the persons therein are endangered, and the person by whose negligence a pistol is unintentionally discharged, resulting in the death of another, is rightly convicted of manslaughter in the fourth degree.—*Legal Adviser*.

##### APPEAL from Randolph Circuit Court.

SHEERWOOD, C. J.—The defendant was indicted for murder in the second degree. On the trial he was convicted of a less offense, to wit, manslaughter in the fourth degree, and

his punishment assessed at two years in the penitentiary. The evidence shows that the defendant was brandishing a self-cocking and self-loading revolver in his saloon, endangering the lives of whoever were there. He was warned of the danger of such actions, and once when his pistol dropped on the counter, a bystander picked it up and put it in his pocket, but, on defendant's promise to put the pistol up, it was returned to him. In a few moments afterwards, however, while flourishing the pistol again, it was discharged, resulting in the death of Hammond, a friend, it seems, of defendant, who had just come into the saloon.

The statute provides: "Every other killing of a human being, by the act, procurement or culpable negligence of another, which would be manslaughter at common law, and which is not excusable or justifiable, or is not declared in this chapter to be manslaughter in some other degree, shall be manslaughter in the fourth degree." Rev. Stats., 1879, § 1250.

The first and sixth instructions given for the State correctly declare the law, and taken all together announce this doctrine: That in order to find a person guilty of manslaughter in the fourth degree it is sufficient to show that the shooting, though unintentionally done, was the result of negligence in handling fire-arms, indicating on the part of such person a carelessness or recklessness incompatible with a proper regard for human life. Mr. Bishop says, "there is little distinction, except in degree, between a positive will to do a wrong and an indifference whether wrong is done or not, therefore, carelessness is criminal."

Thus, if a person, by careless and furious driving, unintentionally run over another and kill him, it will be manslaughter; or if one in command of a steamboat by negligence or carelessness, unintentionally run down a boat, and a person therein is thereby drowned, the act is manslaughter. 1 Bishop Crim. Law, §§ 313, 314 and cases cited. Or, if a person points a gun without examining whether it is loaded or not, and it happens to be loaded and death results, he is guilty of manslaughter. *Reg. v. Jones*, 13 Cox C. C., 628. So, also, if death ensues from discharging a loaded gun at night into a public highway, whether any person were in sight or not, the act being one of gross carelessness, calculated to endanger the lives of persons passing along the street. *People v. Fuller*, 2 Parker Crim. Rep., 16.

In another case a revolver was found in the road with one load in it, six months thereafter repeated attempts failed to discharge it or to

remove the load; over four years thereafter the defendant, in sport, endeavoring to frighten a woman with the revolver, it was discharged, and killed her, and the defendant was held rightly convicted of manslaughter. *State v. Hardie*, 47 Iowa, 647.

These authorities abundantly support the instructions we have commented on, none of them show such a degree of carelessness and disregard of consequences as that exhibited in evidence in this record.

But, it is insisted that the point whether the killing was accidental was not submitted to the jury by the instructions. This position is the result of a gross misconception of the sixth instruction already noticed. By it the jury were told if the shooting was not intentionally done, but was the result of defendant's negligence, etc. Thus, in effect, telling the jury that if the shooting was accidentally done—*vide Webster's Dictionary*, "intentional."

It is also insisted that the statute only makes culpable negligence punishable when resulting in homicide. But such negligence as the defendant exhibited was culpable or criminal, both in the sense of the lexicographers, and of the law writers.

Culpable negligence is the omission to do something which a reasonable, prudent and honest man would do, or the doing of something which such a man would not do under all the circumstances surrounding such particular case. *Sherman & Red. on Negligence*, § 87.

It was unnecessary that the instructions should contain the word "culpable;" it was sufficient that they conveyed to the minds of the jury other and equivalent words, expressive of the idea of culpability. As the instructions given for the State correctly declare the law on the subject of negligence and its punishment, it becomes unnecessary to consider other instructions asked on the same subject by the defendant.

We are not aware that any one heretofore in this State has been prosecuted for manslaughter upon similar circumstances to those which the record presents. And yet we may judge, from the reports of the daily press, instances are not unfrequent within our borders where human lives are sacrificed by playful carelessness in handling firearms. Finding no error in the record, we affirm the judgment.

AN INGENIOUS country parson once succeeded in scaring trespassers by putting up a notice on the wall of his garden, that a *polyphloisboio* was set there.

Court of Appeals of Maryland. April Term, 1882.

LENTZ v. PILERT.

*Administration—Sole Creditor—No Heirs, etc.* A. died intestate, leaving no spouse, heirs or next of kin. B. paid the funeral expenses, and this was the only claim against the estate. *Held*, that B. was entitled to letters of administration, as the sole creditor.

APPLICATION for letters of administration.

IRVING, J., in delivering the opinion of the court, said: The facts of the cases cited (*Chitty on Contracts*, 296; *Green v. Salmon*, 8 Ad. & E., 348; *Tugwell v. Heyman*, 3 Camp., 298; *Rogers v. Price*, 3 Y. & J., 28) illustrate the propriety of this appellant, being next of kin, by affinity, in the absence of persons standing in closer attitude, assuming to provide for the proper interment of the deceased. It was necessary, as Lord Ellenborough said in *Tugwell v. Heyman*, that somebody should see to it, and as this appellant was neice by marriage, to the deceased, it was eminently proper, if not her absolute duty, that she should have given the orders. Having done so, and having paid the expenses incurred, she is certainly, according to the authorities cited, entitled to reimbursement from the estate. She is, therefore, a creditor of the estate, and if she be the "largest creditor," so as to meet that requirement of the statute, we see no good reason why she shall not be entitled, as a matter of right, to the administration.

By the statute of the State, funeral expenses, to a reasonable extent, are made a preferred charge upon the estate, because of the indispensable necessity for proper burial. Inasmuch, therefore, as the person who incurs that expense is a creditor of the estate, we cannot perceive why such creditor was rejected as not being within the law which accords administration as a matter of right to the "largest creditor," in the absence of kindred who are regarded as having prior right. The only reason why a creditor should, in such case, be entitled to administer, is because he has an interest in the estate being administered, and being administered properly and promptly. The larger the demand against the estate, the greater the interest; and therefore without regard to respective fitness for the duty, the law of our State gives the "largest creditor" the prior right. A creditor who becomes such after the death of the decedent, and whose claim is entitled to priority of payment, even over the claims of those whose claims accrued in the decedent's lifetime, has equal interest with any other creditors, in the proper and prompt settlement of the estate. Being a creditor who is preferred

in payment, he certainly ought not to be denied, when he is the largest creditor also, the same rights and privileges in respect to administration which are accorded creditors of inferior degree as to payment. He is clearly within the reason of the rule. He is not excluded by the letter of the law; for there is no qualifying word prefixed or added to the word "creditor," except "largest," which only indicates the order of preference. In this case it does not appear that there is any larger creditor applying; and we are told that in fact she is the only creditor. We do not find that the question has ever arisen directly in this State before; but we are not without precedent and authority for such construction in England, whence our statutory provision is borrowed.

Reversed and remanded.

*Court: What interest disqualifies.*—The fact that a judge of the Superior Court had formerly been a director of a railroad company, and was so at the time that an attorney rendered professional services to the company, does not disqualify him from presiding at the trial of a suit for such services, if at that time he had ceased to be a director, owned no stock, and was not otherwise interested. It is present, not past interest that disqualifies a judge: *Johnson v. Marietta and North Georgia Railroad*, 67 or 68 Ga.

*Bail: Default; relief in case of death.*—Where the bail on recognizance in a criminal case could not reasonably anticipate and prevent a default, and with proper diligence find and surrender his principal after default before death intervened to prevent it, a proper case is made for the court, in its discretion, to relieve the surety on petition: *State v. Traphagen*, 16 Vroom.

*Sale; attachment; principal and agent; title.*—A, the agent of a corporation, had been in the habit of buying certain goods through a broker, but had never bought them on his own account. On one occasion he told the broker that he would take a certain quantity of the goods at a price named. He intended to make the purchase on his own account, but the broker assumed that he was buying for the corporation as usual, and the order was transmitted to and accepted by the seller as the order of the corporation. The broker's note named the corporation as purchaser, the bill was made out to it, and the goods were stored and insured in its name. A did not know this until it was done, but did before payment. When he received the bill he paid it with his own check but did nothing else to

assert his claim as owner until he sold portions of the goods; and he did not change the name in which they were stored or insured. The goods were afterwards attached upon an execution against the corporation. *Held*, that A could maintain an action for conversion against the attaching officer. [*Sloane v. Merrill*. Supreme Judicial Court of Massachusetts, April, 1883. 16 Rep., 176.]

*Attorney and client; authority to discharge judgment debtor.*—The ordinary powers of an attorney at law do not authorize him to execute a discharge of a debtor but upon actual payment of the full amount of the debt, and that in money only. [16 Rep., 148.]

"YES," said the level-headed schoolboy, "I'm at the foot o' my classes, and I calculate to stay there. Then I don't have to stand the wear and tear of anxiety for fear I'll lose my place."

## The Courts.

### EQUITY COURT.—Justice James.

SEPT. 10, 1883.

*Roys v. Roys.* Testimony ordered taken before examiner, John F. Riley.

*Murphy v. unknown heirs of George S. Washington.* Reference to auditor ordered.

*Ourand v. Ourand.* Auditor's report ratified.

*Killian v. Killian.* Sale ordered and Reginald Fendall appointed trustee to sell.

*Church v. Van Renswick.* Dismissal of bill ordered with costs.

SEPT. 11, 1883.

*Bower v. Herth.* Supplemental decree appointing J. F. Ennis joint trustee to sell.

*Galligan v. Strong.* Sale nisi ordered, and F. T. Browning and C. C. Cole appointed trustees to sell.

*Pepper v. Shepherd.* Leave to the receiver, Sands, to rent house.

*Proctor v. Proctor.* Testimony ordered taken before examiner, John Cruikshank.

*Clissell v. Kaiser.* Order appointing William E. Barford guardian ad litem, and cause referred to the auditor.

SEPT. 12, 1883.

*Eustich v. Eustich.* Divorce decreed.

*Lewis v. Lewis.* Same.

*Kappler v. Kappler.* Same.

*Brown v. Brown.* Sale finally ratified and cause referred to the auditor.

*Beach v. Beach et al.* Pro confesso against Mary Ann Lane granted.

*Hudson v. Hudson.* Testimony ordered to be taken before examiner, Cruikshank.

*High v. High.* Appearance of absent defendant ordered.

*Taylor v. Taylor.* Sale of bond confirmed nisi.

*Atchison v. Muirhead.* Argued and submitted.

SEPT. 13, 1883.

*Ketcham v. Georgetown College.* Sales finally ratified and cause referred to the auditor.

Sage v. Sage. Trustee authorized to receive cash and make conveyance.

Duvall v. Mitchell et al. Pro confesso against certain defendants.

Adams v. Clarke et al. Appearance of absent defendants ordered.

Ridenour v. McClelland. Commission to get answer of infant defendants ordered.

Pepper v. Shepherd. Order of September 12 modified.

White v. White. Order appointing R. P. Jackson trustee to convey.

Vincent v. Vincent. On hearing.

SEPT. 14, 1883.

Phelps v. Typett. Testimony ordered to be taken before examiner, John A. Clarke.

Vincent v. Vincent. On hearing.

#### CIRCUIT COURT.—Justice James.

SEPT. 14, 1883.

Judgment by default was taken in the following cases: Sohlien v. Kaufman; Mesereau v. Savage; Walker v. Phillips; and Nitsch & Kuhn v. Bond.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

SEPT. 8, 1883.

24728. Johannah Mulgrew v. Patrick O'Donnoghue. Account, \$678.00. Piffs atty, E. A. Newman.

24729. Rudolph Johnson et al. v. Elizabeth Sizer. Certiorari. Defts atty, J. A. Smith.

SEPT. 10, 1883.

24730. John H. Glick et al. v. The Northern Liberty Market Co. Note, \$1,200. Piffs atty, Leon Tobriner.

24731. William H. Beall v. The Baltimore & Potomac R. Co. Damages, \$5,000. Piffs attys, Hine and Beall.

24732. Edward H. Green v. James W. Colley. Notes, \$268.55. Piffs atty, O. G. Lee.

24733. Thomas Cousins v. Robert H. Hunter. Account, \$111.10. Piffs attys, Edwards & Barnard.

24734. The Westham Granite Co. of Va. v. Laurence E. Gannon et al. Account, \$248.57. Piffs attys, Hagner & Maddox.

24735. Loria M. Sanniders v. Sayles J. Bowen. Note and account, \$4,097.25. Piffs atty, D. O'O. Callaghan.

24736. Solomon J. Fague v. William Hine. Appeal. Piffs atty, E. O. Weaver. Defts atty, D. O'O. Callaghan.

SEPT. 11, 1883.

24737. Wright Curtis v. Samuel Ceas et al. Note, \$150. Piffs atty, H. B. Moulton.

24738. Same v. Same et al. Notes, \$400. Piffs attys, same.

24739. David Wolff v. William Friederick. Notes, \$297.47. Piffs atty, L. Tobriner.

24740. Heckham & Middleton v. Oliver Cox. Notes and account, \$700.92. Piffs atty, C. M. Matthews.

24741. Jacob Madert v. Washington Gas Light Co. Certiorari. Defts atty, W. B. Webb.

24742. John T. Clarke v. John Van Elswick. Damages, \$600. Piffs atty, B. H. Webb.

24743. Thomas Blagden v. John Kennedy et al. Judgment of Justice Bundy, \$88.43. Piffs atty, W. S. Abert.

24744. James T. Petty v. The Baltimore & Potomac R. Co. Damages, \$5,000. Piffs attys, Hine and Beall.

SEPT. 12, 1883.

24745. J. O. Ergood & Co. v. Matthew Goddard. Note, \$427.91. Piffs atty, F. T. Browning.

24746. E. S. Jaffray & Co. v. Truman N. Burrill et al. Foreign judgment, \$321.04 and \$23.56 costs. Piffs attys, H. O. & R. Olanthton.

SEPT. 14, 1883.

24747. Charles Ludington v. David Hagerty, Administrator. Appeal. Defts atty, Fred. W. Jones.

SEPT. 15, 1883.

24748. Adolphus Eckloff v. The District of Columbia. Account, \$500. Piffs attys, Cole and Richards.

#### IN EQUITY.—New Suits.

SEPT. 10, 1883.

8695. The Consolidated Electric Light Co. v. The United

States Electric Lighting Co. of Washington, D.C. Injunction and account. Com. sols., Hunton & Chandler.

SEPT. 11, 1883.

8696. William A. Craig v. Sallie B. Craig. For divorce. Com. sols., Edwards & Barnard.

8697. Thomas M. Johnson et al. v. Henry C. Bowers et al. Judgment Creditors' bill. Com. sols., Birney & Burney.

Defts sol., R. J. Murray.

SEPT. 12, 1883.

8698. Carrie V. Cissell et al. v. Hannah Kaiser et al. Com. sol., E. B. Hay.

8699. Charles E. Hovey et al. v. Augustine B. McDonald et al. Petition for appeal. Com. sols., Wilner and Hayes.

8700. Stephen V. White v. Robert E. Doyle et al. Bill of review. Com. sol., Stephen V. White.

SEPT. 13, 1883.

8701. John Adams v. Reuben B. Clarke et al. Bill to remove cloud on title. Com. sol., R. J. Murray.

8702. John Leetch v. Pleasant Williams et al. Judgment Creditors' bill. Com. sol., F. W. Jones.

SEPT. 14, 1883.

8703. John T. Mitchell v. Lizzie Peterson et al. Judgment creditors' bill. Com. sol., R. P. Jackson.

8704. Owen Driscoll v. Johanna Driscoll. Injunction, discovery and account. Com. sol., S. A. Cox.

SEPT. 15, 1883.

8705. German American National Bank, upon petition of B. U. Keyser, Receiver. For authority to compound indebtedness of George M. Kober. Com. sol., B. U. Keyser.

8706. Jennie E. Rosecrans v. District of Columbia et al. To enjoin. Com. sol., O. Storrs.

#### PROBATE COURT.—Justice James.

SEPT. 14, 1883.

Estate of Maria Southron; final notice issued.

Estate of M. H. Becker; final notice issued.

Estate of Margaret A. Barrett; inventory of personal estate returned.

Estate of James Egan; inventory of personal estate returned.

Estate of Ida K. Davis; R. S. Dyrenforth qualified as executor on bond of \$4,000.

Estate of Maria Southron; order directing payment of the claim of W. J. Miller and granting leave to other claimants to file additional proof.

Estate of Eleanor W. Tuttle; petition of J. B. Dunning for letters of administration and order of publication issued.

Estate of Waterman Palmer; order for rule on R. McAllister to show cause.

Estate of Edward McKerson; order appointing John Barr administrator on bond of \$500.

Estate of Augustus W. Scharit; renunciation of Crypti Palmont as administrator and order appointing John L. Cronse on bond of \$2,000.

Will of Mary Jaffrey Field and petition of Richard Crowther for letters testamentary filed; order of publication.

#### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphan's Court Business. September 14, 1883.

In the matter of the Estate of Elmore W. Tuttle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John E. Dunning.

All persons interested are hereby notified to appear in this court on Friday, the 5th day of October, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
JOHN J. WREED, Solicitor. 37-3

#### THIS IS TO GIVE NOTICE

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of Ida K. Davis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883.  
37-3 ROBERT G. DYRENFORTH, Executor.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, September 14, 1883.

In the matter of the Will of Mary Jaffrey Field, late of  
the District of Columbia, deceased.

Application for the Probate of the last Will and Testa-  
ment, and for Letters Testamentary on the estate of the  
said deceased has this day been made by Richard Crowther.

All persons interested are hereby notified to appear in  
this court on Friday, the 13th day of October next, at 11  
o'clock a. m., to show cause why the said Will should not  
be proved and admitted to Probate and Letters Testamen-  
tary on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
a week for three weeks in the Washington Law Reporter  
previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **57-3 H. J. RAMSDALL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 11th day of September, 1883.

**EMMA J. HIGH**

No. 8692. Eq. Doc., 23

**HENRY HIGH.**

On motion of the plaintiff, by Mr. A. A. Lipscomb, her  
solicitor, it is this 11th day of September, ordered that the  
defendant, Henry High, cause his appearance to be en-  
tered herein on or before the first rule-day occurring forty  
days after this day; otherwise the cause will be proceeded  
with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: **57-3 R. J. MEIGS, Clerk, &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 13th day of September, 1883.

**JOHN ADAMS**

No. 8701. Eq. Doc. 23.

**REUBEN B. CLARKE, JOHN WELSH**  
AND **FELICIA E. WELSH.**

On motion of the plaintiff, by Mr. Robert J. Murray,  
his solicitor, it is ordered that the defendants, John Welsh  
and Felicia E. Welsh, cause their appearance to be entered  
herein on or before the first rule-day occurring forty days  
after this day; otherwise the cause will be proceeded with  
as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **57-3 R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters of Administration on the personal estate of Charles  
L. Veriengen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 7th day of  
September next; they may otherwise by law be excluded  
from all benefit of the said estate.

Given under my hand this 7th day of September, 1883.

**LUCIEN E. C. COLLIERE, Administrator.**  
**HANNA & JOHNSTON, Solicitors.** **57-3**

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of  
John B. Ruth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 15th day of  
September next; they may otherwise by law be excluded  
from all benefit of the said estate.

Given under my hand this 15th day of September, 1883.

**MARIA RUTH, Executrix.**  
**CHARLES A. WALTER, Solicitor.** **57-3**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, September 14, 1883.

In the case of Martin Becker, Executor of Michael Henry  
Becker, deceased, the Executor aforesaid has, with the  
approval of the Court, appointed Friday, the 5th day  
of October A. D. 1883, at 11 o'clock a. m. for making pay-  
ment and distribution under the Court's direction and con-  
trol; when and where all creditors and persons entitled to  
distributive shares (or legacies) or a residue, are hereby  
notified to attend in person or by agent or attorney duly  
authorised, with their claims against the estate properly  
vouched; otherwise the Executor will take the benef-  
it of the law against them: Provided, a copy of this order  
be published once a week for three weeks in the  
Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDALL, Register of Wills.**  
**EDWARDS & BARNARD, Solicitors.** **57-3**

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters of Administration on the personal estate of  
Mary Wilson, alias Mary Sayre, late of the District of  
Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 10th day of  
September next; they may otherwise by law be excluded  
from all benefit of the said estate.

Given under my hand this 10th day of September, 1883.

**REBECCA HINTON, Administratrix.**  
**A. C. RICHARDS, Solicitor.** **57-3**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business, September 14, 1883.

In the case of Martin F. Morris, Executor of Maria South-  
ron, dec'd, the Executor aforesaid has, with the approval of  
the Court, appointed Friday, the 5th day of October, A. D.  
1883, at 11 o'clock a. m., for making payment and distribution  
under the court's direction and control; when and where all  
creditors and persons entitled to distributive shares (or  
legacies) or a residue, are hereby notified to attend in  
person or by agent or attorney duly authorised, with their  
claims against the estate properly vouched; otherwise,  
the Executor will take the benefit of the law against  
them: Provided, a copy of this order be published once a  
week for three weeks in the Washington Law Reporter,  
previous to the said day.

**57-3 Test: H. J. RAMSDALL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of Bernhard  
Berens, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 31st day of Au-  
gust next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**MAGDALENA BERENS, Ex'r.**  
**WARREN O. STONE, Sol'r.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of September, 1883.

**THOMAS B. CRESLEY**

No. 8640. Eq. Doc. 23.

**LUCY J. CRESLEY.**

On motion of the plaintiff, by Mr. J. A. Smith, his solicitor,  
it is ordered that the defendant, cause her appearance to be  
entered herein on or before the first rule-day occurring forty  
days after this day; otherwise the cause will be proceeded  
with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **56-3 R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, A. D. 1883.

**POWER ET AL.**

Equity Docket No. 22. Cause No. 8023.

**WALSH ET AL.**

Rutledge Willson, trustee, having this day reported that  
he made sale on the 7th day of July, A. D. 1883, of lot  
numbered (26) twenty-six of the recorded sub-division of  
original lots numbered (1) one, (2) two, (3) three, (4) four,  
(17) seventeen, (18) eighteen and (19) nineteen, in square  
numbered (611) five hundred and eleven, to Brainard H.  
Warner, for the sum of \$635 50, or 25 cents per square foot:  
It is, this 4th day of September, 1883, ordered, that the said  
sale be and the same is hereby ratified and confirmed un-  
less cause to the contrary be shown on or before the 6th  
day of October, 1883. Provided, a copy of this order be  
published in the Washington Law Reporter once a week for  
three successive weeks prior to said 6th day of October, 1883.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **56-3 R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath ob-  
tained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of William  
J. C. DuHamel, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers  
thereof, to the subscriber, on or before the 31st day of  
August next; they may otherwise by law be excluded  
from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**ELIZABETH H. DUHAMEL,**  
**W. K. DUHAMEL, Solicitor.** **56-3**

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of September, 1883.  
**THE NATIONAL UNION INSURANCE CO.**

v. } No. 8664. Eq. Doc. 23

**JOHN B. TYLER AND OTHERS.**

On motion of the plaintiff, by Mr. A. S. Worthington, its solicitor, it is ordered that the defendants, Albert O. B. Bailey, Thomas B. Bryan, Margaret Heisel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.  
**PATSEY JOHNSON**

v. } No. 5683. Equity Docket 23.

**STEPHEN D. JOHNSON.**

On motion of the plaintiff, by Mr. R. B. Lewis, her solicitor, it is ordered that the defendant, Stephen D. Johnson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.  
**ALBENECHE H. BROWN**

v. } No. 24,674. At Law.

**BRADLEY BARLOW.**

On motion of the plaintiff, by Mr. J. J. Weed, his attorney, it is ordered that the defendant, Bradley Barlow, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jonathan Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of August, 1883.

**JOSEPHINE E. TAYLOR.**

**WASHINGTON DANENHOWER.**

**FRANK T. BROWNING, Solicitor.** 36-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
COLUMBIA. Holding a Special Term for Orphans' Court Business. September 7, 1883.

In the case of Charles A. Walter, Executor, of Catharine Boyd, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 28th day of September, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 36-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Robert B. Pywell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1883.

**EDWIN F. PYWELL,**

**A. M. PYWELL,**

**ROBERT T. PYWELL,**

**E. D. WRIGHT, Solicitor.** 35-3 Executors.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Benjamin F. Grafton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of August, 1883.

**VIRGINIA A. GRAFTON.**

**RUTLEDGE WILLSON, Solicitor.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Nicholas Johnson, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this Court on Friday, the 31st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Patrick Egan, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of Andrew Agan, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

**GORDON & GORDON, Solicitors.** 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. August 31, 1883.

In the matter of the Estate of George A. Heckel, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Benjamin F. Rittenhouse.

All persons interested are hereby notified to appear in this court on Friday, the 31st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

**GORDON & GORDON, Solicitors.** 35-3

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Carl Emil Woroh, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers therefor, to the subscriber, on or before the 27th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of August, 1883.

CHRISTIAN WOROH.

CHARLES WALTER, Solicitor. 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 31, 1883.**

In the matter of the Estate of Erskine Gittings, deceased. Application for Letters of Administration on the estate of said Erskine Gittings, late of the United States Army, has this day been made by Samuel E. Gittings.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Asso. Justice.

Test: H. J. RAMSDELL, Register of Wills.

A. M. McBLAIR, Solicitor. 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 31, 1883.**

In the matter of the Estate of Mary Powers Tuttle, late of the District of Columbia, deceased. Application for Letters of Administration on the estate of the said deceased has this day been made by John B. Dunning, a creditor.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

JOHN J. WEED, Solicitor. 35-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, August 31, 1883.**

In the matter of the Estate of Samuel Kirby, late of Washington City, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil thereto and for Letters Testamentary on the estate of the said deceased has this day been made by Arthur B. Claxton, the sole executor therein named.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

APPLEBY & EDMONSTON, Solicitors. 34-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

FLORENCE B. KOONES ET AL. } Equity. No 7708.

PHOEBE A. L. BUDD ET AL.

Frederick Koones, trustee, having reported that he has sold part of lots 24 and 25, of Kennedy and Webb's subdivision (recorded) of part of original lot one (1), in square No. 618, with the improvements thereon, in Washington City, District of Columbia, and particularly described in these proceedings, to Sue B. Ker, for the sum of \$685:

It is, this 4th day of September, A. D. 1883, ordered, that the said sale will be finally ratified and confirmed on the 6th day of October, A. D. 1883, unless cause to the contrary be shown on or before said day.

Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice, &c.

A true copy. Test: 36-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, September 7, 1883.**

In the matter of the Will of Josiah Curtis, M. D., late of the District of Columbia, who died at London, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Levi Curtis, of Philadelphia, Penn.

All persons interested are hereby notified to appear in this court on Friday, the 23rd day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 36-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

KATIE F. SAGE ET AL. } Equity. No. 8477.

MARY E. SAGE ET AL. }  
John E. McNally and Edwin B. Hay, trustees, having reported that they have sold sub-lot 14, in Hoffmann's recorded sub-division of original lot 2, in square 677, with the improvements thereon, in the city of Washington, District of Columbia, to Hugh Donohoo, for the sum of \$1,779:

It is, this 4th day of September, A. D. 1883, ordered, that the said sale will be finally ratified and confirmed on the 6th day of October, A. D. 1883, unless cause to the contrary be shown on or before said day.

Provided, a copy of this order be published once a week for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

EDA ANN DALLAS } Equity. No. 8668.

OLIVER C. DALLAS ET AL. }  
The trustee in this cause having reported to the court that he has sold the real estate mentioned and described in these proceedings to Mary A. Murphy, and that the terms of sale have been complied with: It is, this 4th day of September, A. D. 1883, ordered, that the sale be ratified unless cause to the contrary thereof be shown on or before the 6th day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington once a week for three weeks before said 6th day of October next.

By the Court. CHAS. P. JAMES, Justice, &c.

True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

MARY T. DAYTON ET AL. } In Equity. No. 7801.

CORNELIA H. DAYTON ET AL. }  
On consideration of the report of James M. Johnston, trustee, filed in this cause on this day: It is, by the court this 4th day of September, 1883, ordered, that the sale reported by him be ratified and confirmed unless cause to the contrary be shown on or before October 1, 1883. Provided, the usual notice be printed in the Washington Law Reporter for two weeks. It is, further ordered, that said trustee sell the notes to be given by L. P. Shoemaker and A. F. Fox, for the face value thereof and as proposed in said trustees' report.

By the Court. CHAS. P. JAMES, Justice.

True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 4th day of September, 1883.**

NICHOLAS WEGGEMANN } No. 8675. Eq. Doc.

FRANCIS H. WEGGEMANN ET AL. }  
Ordered, that the sales made and this day reported by John F. Hanna and Reginald Fendall, trustees for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 6th day of October, next. Provided, a copy of this order be inserted in some newspaper printed and published in said district once in each of three successive weeks before said day.

The report states that the south part of sub-lots 19 and 20, being 31 feet 3 3/4 inches front, sold for \$6,156; and that the north part, being 16 feet 8 1/2 inches front, sold for \$3,000.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 36-3 R. J. MEIGS, Clerk.



# Washington Law Reporter

WASHINGTON - - - - September 22, 1888

GEORGE B. CORKHILL - - - EDITOR

THE SUPREME COURT OF INDIANA, in the case of Pipher v. Foredyce (5 Wisc. Legal News), has decided that where the vendee of a judgment debtor obtain possession of personal property by virtue of a writ of replevin, and by this process takes it from the hands of the sheriff, who had levied upon it under execution against the debtor, the property cannot, while the action of replevin is pending and undetermined, be again levied upon under another execution against the debtor.

The appellee claimed to have acquired title through the Nelson Coal and Iron Company, and being in possession, a levy was made under execution issued on a judgment against the company; the appellee regained possession by suit in replevin, and afterwards, and while the appellee was in possession under the writ of replevin, and while the action was still undetermined, another execution issued against the company was levied upon the same property.

The court, Elliot, J., delivering the opinion, says that it is the general rule that property in legal controversy cannot be seized by other judicial process than that under which it came into the custody of the law (*Stout v. La Gaulet*, 64 Ind., 296); that the possession of the appellees, secured to them by the undertaking given in the replevin proceedings, was in legal contemplation that of the law; that because they, and not the sheriff, were in actual possession, did not change the character of the possession; they were in custody by virtue of the process of the court and really as its agents; citing *Hagan v. Lewis*, 10 Pet., 380, where the Supreme Court of the United States said: "On the giving of the bond, the property is placed in the possession of the complainant. His custody is substituted for that of the sheriff. The property is not withdrawn from the custody of the law." That the conclusion of the court necessarily

followed from these general principles, and its denial involved the affirmance of the proposition that property in the custody of the law may be seized under judicial process. (Citing *Rines v. Phelps*, 3 Gilm., 455; *Archer v. White*, 25 Wend., 614; *Shellack v. Phelps*, 11 Wis., 380; *Hill. on Torts* [3 ed.], 51, § 29, *Freeman on Ex.*, 135.)

## Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

S. E. MIDDLETON

vs.

GEO. B. MCCARTEE, WM. MCMURTRIE ET AL.

LAW NO. 22,171.

Where by a resolution of a stock company a promissory note is issued to pay an indebtedness of the company, the note being signed by the treasurer and endorsed by the directors as such, and afterwards the paper is taken up by one of them, this is nothing more than an advancement by him in behalf of his co-obligors, and entitles him to a contribution for the money thus advanced; he cannot pick out one of the endorsers and charge him with the whole liability, as in the case of an ordinary endorsement.

### STATEMENT OF THE CASE.

#### MOTION for new trial on exceptions.

The plaintiff declared upon the following paper made by the Secretary and Treasurer of the Ellis Gold Mining and Reduction Company, to the order of Geo. B. McCartee, and endorsed by him, to Wm. McMurtrie, C. H. Parsons and others in the order named to the plaintiff, the plaintiff being the last endorser and holder.

"\$2,200.

"WASHINGTON, D. C., July 21, 1877.

"Thirty days after date the Ellis Gold Mining and Reduction Company promise to pay to Geo. B. McCartee or order twenty-two hundred dollars, value received, with interest until paid, at the rate of eight (8) per cent. per annum, payable at the National Metropolitan Bank.

"S. E. MIDDLETON, *Treasurer*.

"A. N. WYMAN,

*Sec'y Ellis Gold Mining and Reduction Company.*"

To the declaration were added the common counts.

The defendant, McMurtrie, pleaded as follows:

1. That the note on which the suit was



brought was a company note, signed by the secretary and treasurer officially, and endorsed by him, (the defendant,) he being the vice president of the company, all in pursuance of a resolution of said company.

2. That he, the defendant, McMurtrie, was merely an accommodation endorser, and received no personal benefit or profit from the transaction.

3. That the plaintiff, Middleton, was one of the persons constituting the said company, and therefore, in effect, both plaintiff and defendant.

4. That he, the said McMurtrie, endorsed the note in suit at the special instance and request of the plaintiff, Middleton; that upon first being requested to endorse the said note by Middleton, he objected and refused, but after being assured by the plaintiff that he should and would not be held responsible on the note, or for it, and that his signature was simply wanted because the bank where the note was negotiated wanted the names of all the officers of the company, and that the defendant's name was necessary, he being the vice president of the company, and that his (McMurtrie's) endorsement of the note was solely and exclusively made upon this promise of the plaintiff, Middleton.

Issue being joined on these pleas and the case coming on for trial, the plaintiff gave in evidence the note endorsed in the order stated.

The execution of the note, the protest, and notice of protest to the defendant were admitted.

The defendant then in support of his pleas, and for the purpose of showing, as he contended, "the true relations between the plaintiff and defendant, and to show the true purpose and proper liability of the immediate parties and original signers," made the following offers of proof, each of which were successively rejected by the court:

1. To prove by the record of the official action of the board of directors of the Ellis Gold Mining and Reduction Company, that at a meeting of the directors on the 1st of April, 1876, the plaintiff and defendant, McMurtrie, both being present, the following resolution was adopted, authorizing the making of the note in question, as follows:

"Resolved, That the secretary and treasurer be authorised to make two promissory notes on behalf of the company—one for \$2,000, payable in three months, and one for \$2,000, payable in four months, with interest at not exceeding 10 per cent. per annum—said notes to be endorsed by the board of directors and negotiated, and the proceeds applied to

the payment of the debt of the company, and that payment of the notes shall be made from the first revenues accruing to the company from any source whatever."

2. To prove by the said records of the company, that at a certain other meeting of the board of directors of the company, February 24, 1876, a certain other note was authorized to be made and negotiated on behalf of the company by the following resolution:

"It was resolved to borrow one thousand dollars at sixty or ninety days by giving a corporate note, to be endorsed by two of the directors individually."

3. To prove by the same record book that the note in suit was a renewal by authority of the said board of directors by resolution dated April 27, 1877, of the note as originally authorized by the resolution of April 1, 1876.

4. To prove that at the time of the endorsement of the note by the defendant, McMurtrie, the plaintiff promised and agreed to and with the defendant, that if he would endorse the note that he should not be held personally liable on it; that his (McMurtrie's) signature was wanted simply because he was one of the board of directors and vice-president of the company, and that he endorsed the note in consideration of the plaintiff's promise and because he was a director and officer of the company.

5. To prove that the plaintiff and defendant were both stockholders or partners in the said company as well as directors at the time of the resolution authorising the original making and renewal of the note in suit, and were both present at the meeting of the board of directors when the said resolutions were considered and passed upon.

6. To prove that as between the plaintiff and the defendant there was no consideration for the said endorsement from the plaintiff to the defendant, McMurtrie, or to any other person at the defendant's instance or request; and that the endorsement was simply an accommodation one, as above recited.

7. To prove that at the time the defendant signed the said note as an endorser, all of the signatures of the other endorsers were already on the note, and a place left for the defendant's name between the names of McCartee, President, and Wyman, Secretary of the said company.

Each of these offers being rejected and exceptions taken. The court, the case being closed, instructed the jury that the plaintiff was entitled to recover, and that they should find for him the full amount of the face value of the note in suit with interest according to

its terms. A verdict and judgment having been accordingly entered in favor of the plaintiff, the defendant, McMurtrie, moved this court for a new trial on the exceptions taken.

LINDEN KENT for plaintiff:

It is submitted that no one of the pleas constitute any defence to the action.

The first, merely in different language, re-asserts the allegations of the declaration that the note was that of the company and was executed in accordance with authority especially given.

The second, that the defendant McMurtrie, was an accommodation endorser, and not liable. The answer is, that accommodation endorsers are liable unless the circumstances bring them within some rule of exemption, which this plea does not attempt to do.

As to the third plea, that the plaintiff Middleton, was one of the persons constituting the said company, and, therefore, in effect both plaintiff and defendant, no comment need be made. *Twin Lick Oil Company v. Marbury*, 1 Otto, 5 87.

The fourth plea undertakes (but imperfectly) to set up a verbal agreement contemporaneous between McMurtrie and Middleton, which would not only vary the terms of the instrument, but makes it absolutely null and void as to the defendant McMurtrie.

The doctrine on this subject, especially as applicable to negotiable paper, and as between the immediate parties thereto, is so well settled by the Supreme Court of the United States, that we rest it with a reference to the following cases: *Goodman v. Simonds*, 20 How., 343; *Brown v. Wiley*, 20 How., 443; *McDonald v. Magruder*, 3 Peters, 474; *Forsythe v. Kimball*, 91 U. S., 291; *Bank U. S. v. Dunn*, 6 Peters, 57; *Thompson v. Insurance Co.*, 104 U. S., 252; *Martin v. Cole*, 104 U. S., 30.

In *Specht v. Steward*, 16 Wall., 564, Mr. Justice Swayne delivering the opinion of the court, quotes from *Parsons on Notes and Bills*, 507, "that it is a firmly settled principle that parol evidence of an oral agreement alleged to have been made at the time of the drawing, making, or endorsing of a bill or note, cannot be permitted to vary, qualify, or contradict, to add to or subtract from the absolute terms of the written contract;" and Mr. Justice Matthews, in the case of *Martin v. Cole*, *supra*, quoting this, says, that "the question, as it arises in this case, cannot now be considered an open one in this court."

Under these authorities, the evidence offered was inadmissible in any view, but if the circumstances justified it, in no aspect could it

have been admitted under the pleadings in this suit.

J. W. DOUGLASS for defendant:

1. The defendant offered to prove that "at the time of the endorsement of the note by the defendant, McMurtrie, the plaintiff promised and agreed to and with the defendant, that if he would endorse the note he should not be held personally liable on it; that his (McMurtrie's) signature was wanted simply because he was one of the board of directors and vice-president of the company, and that he endorsed the note in consideration of the plaintiff's promise and because he was a director and officer of the company." This evidence should have been heard under the familiar principle that "any facts constituting fraud or misrepresentation, may be set up as a defence to a note, the burden of proof being on the party alleging it." And that this principle has uninterrupted play between the immediate parties to a note. *Chitty on Bills*, 70; *Byles on Bills*, 243 (150); *Parson's Mer. Law*, 124; *Kerr on Frauds and Mis.*, 91-99; 21 *Pick.*, 195; 1 *Conn.*, 329; *Abbott's U. S. Dig.*, 1 series, 868; 1 *Daniel on Neg. Inst.*, § 710; 22 *Wisc.*, 21.

2. The defendant offered to prove by the official record of the board of directors, that the note was a company note, for the company's use alone, and was made in pursuance of certain resolutions passed at certain meetings of the board, at which meetings both the plaintiff and defendant were present and taking part as members of the board and officers of the company. The resolutions referred to show beyond doubt, as the note itself does on its face, and by the arrangement of names (endorsers) on its back, that the transaction was corporate and not individual. This, being a simple question of fact, without the slightest admixture of legal controversy, should have been left to the jury to determine. To take it from the jury, as was done, was fatal error.

3. The defendant "further offered to prove that the plaintiff and the defendant were both stockholders or partners in the said company as well as directors at the time of the resolution authorizing the original making and renewal of the note in suit, and were both present at the meeting of the board of directors when the said resolutions were considered and passed upon." This offer was refused however, and constitutes another grave error, as it robbed the defendant, when considered in connection with the other offers in the case, of the benefit of that principle of law which holds, that

"in no case can a man sue when he is both entitled and liable to contribute, though such liability appear neither on the instrument nor on the record." Byles on Bills, 76 (31) and 157 (130); 6 Pick., 316; 27 Barbour, 552; Parson's Mer. Law, 128; 1 Daniel on Neg. Inst., § 703.

4. The "defendant further offered to prove that as between the plaintiff and the defendant there was no consideration for the said endorsement from the plaintiff to the defendant, McMurtrie, or to any other person at the defendant's instance or request, and that the endorsement was simply an accommodation one, as above recited." This offer was rejected, and the defendant deprived of the benefit of the principle applicable to such cases, that "in the case of an accommodation endorsement there is an implied engagement on the part of the person requesting the accommodation, that he will indemnify the endorser to the extent of the sum payable on the bill." Chitty on Contracts, 438; 1 Greenleaf's Evidence, § 284; 2 Greenleaf's Evidence, § 171; 1 Daniel on Neg. Inst., § 679.

5. The "defendant further offered to prove that at the time the defendant signed the said note as an endorser all of the signatures of the other endorsers were already on the note, and a place left for the defendant's name between the names of McCartee, president, and Wyman, secretary of the said company." The object of this offer, which was rejected, was to show to the jury that the endorsement by McMurtrie was merely an official act as Director and vice-president, and by consequence that he was not individually liable on the note—at least as between him and the immediate parties to the note. The offer was of great importance on this point, when considered in connection with the language of the resolutions authorizing the making of the notes, as it showed with strong inference that all of the parties to the transaction recognized that the defendant's signature was to be, and was merely official.

6. The bills of exception further show that "the court rejected all of the evidence offered by the defendant to show the true relations between the plaintiff and defendant, and all evidence tending to show the true purpose and proper liability of the immediate parties and original signers of the said note in suit." The defendant claimed at the trial, as he claims now, that as between the immediate parties to a note, the obligation is one of ordinary contract, and not to be tested by those more stringent rules, in the interest of trade, that prevail when the controversy is about

the rights of third or innocent parties. As between the immediate parties to a note, as the plaintiff and defendant were in this case, in a most striking and emphatic manner, the following rule, taken from one of the latest and ablest authors on the subject, is the true and just measure of responsibility: "As between the immediate parties, the interpretation ought to be in every case such as will carry their intention into effect, and that their intention may be made out by parol proof of the facts and circumstances which took place at the time of the transaction." 1 Daniel on Neg. Insts., secs. 174 and 710.

Mr. Chief-Justice CARTER delivered the opinion of the court:

On the trial of this case an offer was made to show that these parties were directors of the company named in the paper sued on, and that the company being indebted, the directors at a meeting held by them at which the plaintiff and defendant McMurtrie were both present, resolved to issue two promissory notes of \$2,000 each, the notes to be endorsed by the directors and negotiated, and that the note in suit was a renewal of one of the notes made by virtue of this authority, and further, that at the time of the endorsement Middleton told the defendant that if he would endorse the note he would not be held personally liable on it, that his (McMurtrie's) signature was wanted simply because he was one of the board of directors and vice-president of the company, and that he, McMurtrie, endorsed the note in consideration of the plaintiff's promise and because he was a director and officer of the company.

The question arises, what kind of a paper, as between the parties to it, did these directors get up? Did they make an ordinary piece of commercial paper that left liability to follow in the order of signatures? Or was it the simultaneous and concurrent act of all the parties. It seems to us that this resolution was a part of the written obligation which issued out of it, and that this was a paper concerted in the interest of all the parties. They were all involved in the indebtedness of the company and they were all desirous of getting rid of that indebtedness, and they were all together when they passed the resolution creating this paper. Now we are asked to change the relative position of the parties to that transaction and to make one of them the beneficiary of the whole of it, and the remainder of them, or one of them, the bearer of the onus of the obligation which they all united in. Can we do it? Ought we to do it? The plaintiff Middleton, in common with the other

parties to this suit, are obligated to protect the paper and see that it is paid. His act in taking up the common obligation was nothing more than an advancement by him in behalf of his co-obligors and entitles him to a contribution for the money that he thus advanced and no more.

There is some difficulty about the pleadings which can be easily remedied on another trial. A recovery could be had, however, under the common counts. This paper is declared on as an ordinary promissory note, and the pleas, too, are misconceived, this is not a case of accommodation endorsement. The case is remanded for a new trial with leave to the parties to amend as they may feel advised.

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**Supreme Court of Indiana.**

**CITY OF EVANSVILLE v. MORRIS ET AL.**

An official bond signed by the surety on Sunday and handed to principal, who afterwards delivers it to the proper officer on a secular day, who receives and approves it, binds the surety. *Davis v. Barger*, 57 Ind., 54, and cases following it, overruled.

From the Vanderburg Circuit Court.

**BEST, C.**—This action was brought by the appellant upon the official bond executed to it by William G. Whittlesey, as secretary of the waterworks of the city, and by David Elkins and Frank Morris as his sureties. The condition of the bond was that Whittlesey should pay over to the city all sums of money that should come into his hands as such secretary, and the breach assigned was that after its execution, and after he had entered upon the discharge of his duties, he received as such secretary, the sum of \$723.04 from various persons, and, although said sum had been demanded of him and his sureties, and although it was due and unpaid, he and they failed and refused to pay it.

Whittlesey made default, and the other appellees answered separately. Each answer contained two paragraphs. The first paragraph of each was precisely alike. The answer of Frank Morris was as follows: "Frank Morris, for his separate answer, says that he admits signing the bond in the complaint mentioned, but says he did not sign said bond on the 15th day of April, 1878, the day it bears date, but that he signed the same and delivered it to his co-defendant, Whittlesey, on the 14th day of April, 1878, which was the first day of the week, commonly called Sunday, and not any other or different day, and that such signing and delivering were the only acts done by him at the time of the execution of said bond." A demurrer for the want of facts was over-

ruled to each of these paragraphs, and an exception reserved.

A reply in two paragraphs was filed to the first paragraph of each answer. The first paragraph of the reply was, in substance, as follows: The plaintiff avers that there existed in the city of Evansville, on the 1st day of April, 1878, what was known as the city waterworks, by which the city and its citizens were supplied with water; that the waterworks were under the management of the common council, a secretary and superintendent of the waterworks; that among the duties of the secretary was the collection of water rents and revenues, and the payment of them to the city treasurer; the secretary received a salary, and before entering upon the duties was required to give his bond to the city, with sureties, in the sum of \$5,000, which it was the duty of the mayor or common council to approve; that, on the 8th day of April, 1878, Whittlesey was appointed secretary of the waterworks by the common council of said city, as his sureties well knew; that he was required to give bond, as his sureties well knew, and that the bond was necessary in order to enable Whittlesey to get control of the office to which he had been appointed, as his sureties knew; that they knew it was necessary to have the bond approved by the mayor or common council, and knew the bond was dated Monday, the 15th day of April, 1878, the day it bore date; that they knew the mayor or common council would not approve the bond if executed or dated on Sunday; that they knew that Whittlesey on some subsequent secular day, would deliver the bond to the mayor or common council, who would approve the same on presentation, because the mayor and city clerk knew the signatures of the sureties, and that they were men of wealth, worth \$15,000 each; that the sureties, knowing all these facts, and for the purpose of enabling Whittlesey to take possession of the office to which he had been appointed, signed the bond on Sunday and gave it to Whittlesey, who on the day following, Monday, the 15th day of April, 1878, the day of the date of the bond, delivered the same to the mayor, who, being acquainted with the signatures and financial ability of the sureties, approved the same; that Whittlesey immediately entered upon the discharge of his duties as secretary of the waterworks, and was thereby enabled to embezzle the money of the city; that plaintiff had no knowledge that the bond was executed on Sunday until a few days before the bringing of this suit; that by reason of the sureties signing said bond and putting it into the hands of Whittlesey, and

by reason of the representations contained in the bond, the plaintiff believed it to be a good and sufficient bond, acted upon it with that belief, and permitted Whittlesey to assume control of the office and to remain in possession thereof; that the plaintiff relied upon the bond, and would have refused to permit Whittlesey to exercise control of the office had it known the foregoing facts, and had it not been such facts were concealed from the plaintiff.

A demurrer, for the want of facts, was sustained to each paragraph of the reply, and, the appellant declining to further plead, final judgment was rendered for the appellees.

The errors assigned are that the court erred in overruling the demurrer to the first paragraph of each answer, and in sustaining the demurrer to each paragraph of the reply.

The question raised by the first assignment is whether a bond dated on Monday, but which was signed by a surety on Sunday, and on that day delivered by him to the principal therein, who afterwards, on a secular day, delivers it to the obligee who accepts it without notice of such facts, binds the surety. The delivery of the bond to the principal after the surety has placed his name upon it, as a rule authorizes the principal to deliver it to the obligee, for such is the channel through which the paper would properly pass in reaching the obligee. *Deardorff v. Foresman*, 24 Ind., 481.

If the delivery by the surety had been made on a secular day no question could arise as to the authority of the principal to make the delivery to the obligee; but it was made on Sunday, and it is claimed that this fact vitiated the authority thus conferred, though the bond was not accepted until a secular day. This position is based upon the ground that the act of the surety is in violation of our statute prohibiting persons from engaging in common labor on the Sabbath day. 2 R. S., 1876, p. 483. It is well settled that an instrument executed on the Sabbath day cannot be enforced as a general rule. *Pate v. Wright*, 30 Ind., 476; *Perkins v. Jones*, 26 Ind., 499.

The bond in question, however, was not executed on the Sabbath day, as it was not accepted by the obligee until a secular day. This leads us to enquire whether the statute embraces the case. The ground upon which courts have refused to maintain actions on contracts made on the Sabbath day is the elementary principle that one who has participated in a violation of the law cannot assert any right growing out of such illegal transaction. *Cranson v. Goss*, 107 Mass. 439 (9 Am. R., 45). It is said in this case that "It is

upon this principle, that a bond, promissory note or other executory contract, made and delivered upon the Lord's day, is incapable of being enforced, or, as is sometimes said, absolutely void, as between the parties. *Pattee v. Greely*, 13 Met. 284; *Merriam v. Stearns*, 10 Cush., 257; *Day v. McAllister*, 15 Gray, 433; *Towle v. Larrabee*, 26 Maine, 464; *Pope v. Linn*, 50 Maine, 83; *Allen v. Deming*, 14 N. H., 133; *Finn v. Donahue*, 35 Conn., 216."

The rule is thus stated in *Johns v. Bailey*, 45 Iowa, 241: "The ground of the principle upon which such a contract is pronounced invalid is the violation of the law by the parties thereto. It is *causa turpis*. The parties to the contract are *particeps criminis*, and are *in pari delicto*; neither can enforce the contract: for both are violators of the law."

Again, in *Tuckerman v. Hinkley*, 9 Allen, 452, it is said: "The ground on which a plaintiff's action is defeated in such case is, that a party is not permitted to found a claim in courts of law upon his own contravention of law."

In *Sargeant v. Butts*, 21 Vt., 99, it is stated that "in order to render a contract void, for the reason that it was closed on Sunday, it must appear, that the party seeking to enforce it had some voluntary agency in consummating the contract on that day."

In *Dohoney v. Dohoney*, 7 Bush. (Ky.), 217, where a surety had signed a note on Sunday and delivered it to his principal, who afterward delivered it to the payee, the court said that there was no evidence that the note was delivered on the Sabbath day, or that the payee "participated in any violation of the statute prohibiting labor and business, \* on the Sabbath day; and, according to the case of *Ray v. Catlett*, 13 B. Monroe, 532, and other decisions under our own and similar statutes of other States on the subject, the illegal acts of the obligators in the note did not affect its validity in the hands of the obligee, who did not himself violate the law."

In *Tuckerman v. Hinkley*, *supra*, the defendant had written a letter on Sunday, to the plaintiffs, requesting them to store and sell some iron for him. This request was not accepted or acted upon till Monday or Tuesday. In a suit upon the contract, it was held that, as the plaintiffs did nothing in contravention of the statute, the defendant's own wrong would not exonerate him from his obligation.

In *Dickinson v. Richmond*, 97 Mass., 45, a request for services was made on the Sabbath day. The request was accepted and the services rendered on a week day; and in a suit

upon the contract it was held that the defendant's own wrong in making the request on the Sabbath day did not taint the contract with illegality.

These cases abundantly show that a party to a contract, who has not himself violated the law, is not precluded from enforcing such contract, and that the acceptance of a bond on a secular day, which was assigned on the Sabbath, is not a violation of the law. It is also well settled that if some steps are taken toward the execution of a contract on the Sabbath day, but it is not fully consummated until a secular day, such contract is not in contravention of the statute. *Beitenman's Appeal*, 55 Pa. St., 183; *Merrill v. Downs*, 41 N. H., 72; *State v. Young*, 23 Minn., 551; *Prather v. Harlan*, 6 Bush (Ky.), 185; *Commonwealth v. Kendig*, 2 Pa. St., 448. These cases conclusively show that to bring the case within the inhibition of the statute it must be shown that the contract was executed upon the Sabbath day.

This bond was not delivered upon the Sabbath day, and, as it was not executed until it was delivered, it follows that it was not executed upon the Sabbath day.

In *Beitenman's Appeal*, 55 Pa. St., 183, it is said: "A bond is not perfected until delivery; hence a mere signing on Sunday does not render it void; if not delivered till the day following." The same principle exactly is to be found in *Sherman v. Roberts*, 1 Grant, 261. The contract must, therefore, be complete on Sunday to avoid it, and this is the rule in *Fox v. Mensch*, 3 W. & S., 446; and in *Lyon v. Strong*, 6 Verm., 219; and *Lovejoy v. Whipple*, 18 Id., 319."

In *Adams v. Gay*, 19 Vt., 358, the court said: "Contracts of this kind are not void because they have grown out of a transaction upon Sunday. This is not sufficient to avoid them; they must be finally closed upon that day."

In *Lovejoy v. Whipple*, 18 Vt., 379, it is said: "In order to avoid this contract, on the ground taken below, was it necessary that the note should have been delivered as well as written and signed, upon Sunday?"

The general principles announced in the foregoing cases show that to bring this case within the inhibition of the statute it must appear that the bond was executed upon the Sabbath day, and this precise point has several times been decided in suits upon bonds executed by sureties in a similar way.

In *Prather v. Harlan*, 6 Bush, 185, sureties signed their names to a bond on the Sabbath day and delivered it to their principal who afterward delivered it to the obligee on a

secular day. In a suit upon the bond the sureties insisted that it was, for such reason, void, but the court held otherwise, saying that as the bond did not become obligatory until delivered to the officer it cannot be regarded, as far as the obligee's rights are concerned, as executed on Sunday.

In *Commonwealth v. Kendig*, 2 Pa. St., 448, a surety signed an official bond on Sunday and delivered it to his principal, who, thereafter, on a secular day, delivered it to the obligee, and in a suit upon the bond the court held that the surety was bound, saying that although the act of signing the bond on Sunday exposed the surety to the penalty imposed by the statute, yet it did not avoid the bond, "for the statute cannot destroy that which had no existence."

In *State v. Young*, 23 Minn., 551, sureties had signed a county treasurer's bond on the Sabbath day and had delivered it to their principal, who delivered to the obligee on the next Thursday, and in a suit upon such bond the sureties insisted it was void, because signed by them on Sunday. The court, however, held otherwise, saying that the bond was not executed until Thursday, and "the mere signing of it on Sunday does not affect its validity."

In *Hall v. Parker*, 37 Mich., 590 (26 Am. R. 540), a bond was executed for costs. This bond was signed by the sureties on Sunday, delivered to the principal, and by him delivered to the court during the following week. In a suit upon this bond the sureties insisted that it did not bind them because signed on Sunday; the court held otherwise, saying that the bond took effect on a secular day, and "the circumstance that the act of signing occurred on Sunday could not be allowed to invalidate the instrument."

The same was decided in *Hilton v. Houghton*, 35 Maine, 143, in a suit upon a promissory note executed by sureties in the same way. In all of these cases nothing was done by the sureties to their respective principals, and the cases are, therefore, as we think, precisely in point.

These cases clearly show that a surety who authorizes his principal, on Sunday, to deliver an instrument signed by the surety on that day is bound by such delivery. The reason is obvious. The authority to make the delivery, but for the statute, is ample and complete. The statute does not affect it, for the reason that it alone prohibits the enforcement of contracts executed on the Sabbath day. If otherwise, it would punish a party who has done no wrong, and would exonerate a party from a civil obligation simply because

he had himself violated the law. It would thus shield the guilty and punish the innocent. This it will not do, and hence the authority to make the delivery is unaffected by the statute.

There is another and equally cogent reason why the facts stated constitute no defense. The only thing they legally tend to show is the non-delivery of the bond. This simply questioned its execution. The execution of the bond, however, was admitted, because it was not denied by a pleading under oath. If the answer had alleged that the bond was not signed by the appellees, or was not delivered by them personally, or by any person authorized to make the delivery, no one would pretend that such answer, in the absence of a verification, would be worth anything. Yet this answer alleges nothing more. It is true that it does not, in terms, allege that the person who made the delivery had no authority to make it, but the fact from which such conclusion is drawn, viz., that the authority was given on Sunday, is averred, and this amounts to no more than an averment that the bond was delivered without authority. The admission remains that the bond was executed, and the facts averred only show that some steps were taken on Sunday toward the execution of a bond that was afterwards duly executed upon a secular day. That this is not sufficient to invalidate the bond is well settled by a long and almost unbroken line of decisions in all the States where statutes similar to ours have been enacted. This answer, therefore, presents no question as to the execution of the bond, and hence no question arises as to its delivery, or as to the authority of the person by whom the delivery was made. All defenses of this nature are based upon the admission that the instrument has been duly executed; if not executed, it is wholly immaterial whether the appellees signed their names on Sunday, or on any other day, as such instrument will not bind them, whenever signed. The enquiry as to when the bond was signed only becomes material upon the admission that it was executed at some time. At what time is the question. If at any time other than on Sunday the statute does not render it void. It is not averred that this bond was executed on Sunday, and, therefore, the facts averred constitute no defense to the action.

We are aware that the case of *Davis v. Barger*, 57 Ind., 54, decides this question the other way, that some other cases follow it; but we think the conclusion thus reached wrong, and that the case should not be followed. As the answers in question, for the reasons given, were insufficient, the demur-

ers should have been sustained; and for the error in overruling them the judgment should be reversed. The reply was good.

PER CURIAM.—It is therefore ordered, upon the foregoing opinion, that the judgment be and it is hereby in all things reversed, at the appellee's cost, with instructions to sustain the demurrers to the first paragraph of each of the appellee's answers.

NIBLACK, J., did not participate in the decision of this cause.

Petition for a rehearing overruled.

#### Supreme Court of Appeals of Virginia.

COGBILL vs. BOYD.

*Appeal from Mecklenburg County.*

1. *Trusts: Sales by trustee to cestui que trust.*—A trustee furnished goods from his own store to a married *cestui que trust*, for the support of herself and family, at less than current prices in the neighborhood: *Held*, That the amount of such sales was a lawful charge in his favor, especially as the instrument creating the trust provided for the application of the principal to the support of *cestui que trust* and her family, upon order of the court.
2. *Ibid.: Investments by trustee.*—The fact that a trustee made imprudent investments of the trust fund, upon the advice of the husband of the *cestui que trust*, will not excuse him.
3. *Ibid.: Advice of counsel.*—Advice of counsel will not protect a trustee in the doing or omission of acts not warranted by, or in violation of, his trust.

Bill exhibited by *cestui que trust* and her husband against the trustees and others. It appeared, *inter alia*, that Boyd, the trustee and appellee herein, furnished the *cestui que trust* goods from his store for the support of *cestui que trust* and her family, for which he charged less than he charged other customers, and less than the current rates in the neighborhood. These sums were charged in settlement by him, and were approved by the court. The contention also involved the propriety of certain investments made by the trustee.

FAUNTLEROY, J., in delivering the opinion of the court, said: The appellant assigns for error that Boyd, the appellee, during a long period of years, ran up annual accounts largely in excess of the annual income of the trust estate, and that these accounts are mainly, if not wholly, for disbursements to himself in payment for his individual mercantile account for goods sold to his *cestui que trust*, and that upon all such sales he realized a clear cash profit of twenty-five per centum on goods sold. We do not think that the court erred in allowing and sanctioning this. The family of the *cestui que trust* consisted of

eight persons, viz.: Mr. and Mrs. Cogbill, five daughters and one son, all under twenty-one years of age, and a portion of the principal of the trust property was required for the support, and, indeed, it may have been for the sustenance of this family; moreover, this very exigency had been contemplated and provided for by the terms of the decree of settlement. The court could as well sanction the application of the principal, in whole or in part, to the support of the *cestui que trust* and her family, after a debt for that purpose had been contracted, as it could and would have directed it beforehand upon a proper case made: *Barton v. Bowen*, 27 Gratt., 855. The appellee, Boyd, was a merchant doing business in Boynton, and he sold his goods to his sister and her family at less than, the record shows, he did to all his general customers, and less than all the other merchants would have charged her for the same goods; and we do not think that in so doing he violated the fundamental principle of the law of trusts, that a trustee will not be permitted to make his trust a source of private gain or profit to himself.

Trustees authorized to invest on mortgage must personally see to it that the security is forthcoming upon parting with the money: *Perry on Trusts*, § 463; *Lewin on Trusts*, p. 351, top 319; pp. 471-473, margin; top pp. 402-403; top pp. 612-614, 615; *Perry on Trusts*, §§ 457-459, 463-469, 471. A loss incurred to the trust estate through the negligence of the trustee must be borne by him: *Perry on Trusts*, § 914; 2 *Lomax on Ex'rs*, pp. 482-484; 2 *Story Eq. Jur.*, § 1274; *Miller v. Holcombe's Ex'rs*, 9 Gratt., 665; *Southall v. Taylor*, 14 Ib., 269. This case under review is the direct converse of that stated by Lord Hardwicke in *Knight v. Lord Plymouth*; by Chancellor Kent in *Thompson v. Brown*; by Judge Lee in *Elliott v. Carter*; by Judge Christian in *Davis v. Harmon*; by Judge Burks in *Douglass v. Stephenson's Ex'r*. We think that the trustee, Boyd, did not act with the same discretion and judgment in making the investments of the moneys of his trust fund that a man of ordinary prudence is accustomed to bestow upon his own private affairs; but did act, both by commission and negligence, with the estate of his *cestui que trust* so as to inflict loss upon the trust fund, which loss the trustee, Boyd, must personally bear; and he should be charged with the costs, fees and expenses incurred by both of these improvident and injurious investments made by him as aforesaid. It is no excuse for this trustee that he acted under the advice of the husband of the *cestui que trust*; he was not the trustee;

and one of the expressed objects of the settlement was to protect and preserve the property from his control, management, or liability. The advice of counsel will not protect a trustee in the doing or omission of acts not warranted by, or in violation of, his trust: *Lomax on Ex'rs and Adm'rs*, pp. 482, 483, 488, 489, top p.; 2 *Spence Equity*, pp. 918, 919, top p. We do not think that it was error to allow the payment out of the trust fund of the private store account of the said Boyd, trustee, for the year 1879, to the amount of \$820.49, because it was contracted by and for the *cestui que trust*, and the decree of settlement expressly provided that, if necessary, the court might and would apply even the whole of the estate to the maintenance of the beneficiaries in the trust. Nor did the court err by giving its sanction and confirmation to the investment by the trustee, Boyd, of the sum of \$987.50 of the trust fund in the purchase of a home for the *cestui que trust* and her family upon her own petition filed at the November Term, 1877.

Reversed and remanded.

—*Chicago Legal News*.

#### The Jury.

Donovan, in his recent work on "Trial Practice," gives the following ten rules regarding trials by jury:

1. Select your jurymen, with warm intelligent faces; exclude officers of every kind. Become early familiar with the winning facts of both sides. Conceal them, and instruct parties and witnesses to keep silent and let the counsel do the planning of theories.

2. Find what opponents are likely to prove, and how probable will be the showing, and, if false, how it can be denied or met by fair explanation.

3. Nothing takes so well as common sense. Be reasonable. Never weary a court with technicalities, nor a jury with quibbles, nor offend a witness by brow-beating, but know what you need to make a case and stop when it is established, so that the jury may see the sharp end of your evidence,

4. Cross-examine only with an object—bring out the point and don't cover it; avoid all abuse of counsel or parties; such quarrels draw attention from the issue, and cause disagreements, while kindness and fair play win a lasting victory.

5. Explain the reason of the law to the jury, or in their hearing. The average mind is wiser than than many suppose. But be sure the jury know the consequences of the verdict.



6. Counsel, and not clients, should control cases and trials.

7. In opening an argument, select first the points on which there is least dispute, and, if possible, those nearest with your position. Pass to the others with confidence, and carry the jury with you by reason, not by threats, not by bombast. Leave appeals until after the convincing is accomplished. But feel what you say, and believe what you say, always.

8. Treat a jury with unbounded confidence; like begets like, under all circumstances. Men are not driven by threats, but persuaded and convinced by reason and common sense when it is clearly illustrated. Jurymen prefer to do right. Show them the right road in a plain, clear manner.

9. The strongest of reason is: What would you have done under like circumstances? Human nature finds excuses for wrongs that lead to good results and are justifiable. Men generally do on a jury what seems most reasonable, if it is shown to them in a sensible and convincing manner.

10. There is no opportunity better than the earliest. Let the jury know from the beginning that you believe in your rights and will fairly enforce them, while their minds are as clear as *white paper*. "Write it on their hearts and engrave it on their bones," that your client has the rights you contend for and will ask for none other. But insist upon justice. On this, be so full, so determined, so fortified with law and reasonable evidence, that it will stand like a mountain, unshaken either by quibbles or appeals.

#### Supreme Court of Nebraska.

JOSLIN v. MILLER.

*Appeal from Colfax County.—March, 1883.*

1. The validity of a note made in Nebraska, and payable in New York, is to be determined by the laws of Nebraska.
2. One who affirms an usurious loan made by an agent, adopts all the instrumentalities employed by the agent in the transaction.

Action to foreclose a mortgage securing a note. The note was made in Nebraska and payable in New York. The defendants pleaded payment, and usury under the laws of New York. The plaintiff appealed.

MAXWELL, J., in delivering the opinion of the court, said: In the argument of this case the attorneys for the appellee insisted very strenuously that the contract was to be governed by the laws of New York, and that as by laws of that State, which are set out in the answer, an usurious contract is void, therefore the plaintiff is not entitled to recover.

The same question, on substantially the same facts, was before this court in the case of *Olmstead v. N. E. Mtge. Co.*, 11 Neb., 493; and it was held that the validity of the contract was to be determined by the laws of this State and not of New York. And we adhere to that decision.

The statute fixes the maximum rate of interest and declares the penalty of taking a greater rate—the loss of all interest. It applies to all persons loaning money. The language is "If, in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall only recover the principal without interest," etc. The plaintiff, therefore, who affirms a contract made for him by his agent, must adopt all the instrumentalities employed by his agent to bring it to a consummation. *N. E. Mtge. Sec. Co. v. Hendrickson*, 12 N. W. Rep., 916; *Elwell v. Chamberlain*, 31 N. Y., 619; *Fuller v. Wilson*, 3 Ad. & E., N. S. 58; *Nat. Exch. Co. v. Drew*, 32 Eng. Law & Eq. 1. The reason is, the law will not permit the principal to adopt that which he thinks is beneficial and reject the remainder. The contract must be adopted as a whole. With what reason, therefore, can a party say that a contract which he affirms, made for him by an agent whom he authorized to loan his money, is not usurious because he has not received directly an amount in excess of the legal interest? The person authorised by him to make the loan, however, did receive such excess, and that was a portion of the contract by which the loan was effected. The statute is clear and unambiguous and applies to all persons loaning money. To permit an agent to charge a rate of interest in excess of what his principal could do would practically abolish the law regulating the rate of interest and offer a premium for devices and subterfuges for the evasion of the statute.

Decree affirmed.

#### Book Notice.

#### A New and Useful Book of Reference for Lawyers.

No apology need be offered for presenting to the legal profession, and to law courts, the "CHRONOLOGICAL REGISTER," an index of American Law and Equity Reports of the Supreme Court of the United States, the Supreme Courts of the various States and Territories, Courts of Admiralty and Bankruptcy, Municipal Reports, the Court of Claims of the United States, Surrogate Courts, Orphans' Courts, and the Opinions of

the Attorneys-General, with the dates of decisions of cases reported, from the earliest American Reports to the present, including Independent Reporters, with a Key to Abbreviations.

It is an index in the most convenient form, and the most comprehensive sense, to all volumes of law and equity reports of this country, prepared by Hon. GEORGE E. HARRIS, late Attorney-General and Official Reporter of Mississippi, and a former Representative in Congress from that State.

If it adds to knowledge to know the names of the authors, the dates of decisions, and where to find the volumes, this work has its special value. The editor's experience as a lawyer and reporter is a guarantee that the present work is both exact and useful. To the student, the practitioner, the court in consultation, and to the librarian, it will save time and labor, and justify the aims of the author. Very considerable labor was bestowed on its preparation by JOHN N. OLIVER, Esq., the professional associate of the author, and to whom respectful acknowledgments are made. The work is sold by subscription only, at \$2.50, in law sheep; in cloth, \$2.00.

A LOCOMOTIVE ran through a bridge on the Kansas Pacific railway across Kiowa creek, several years ago, sinking into the mud at the bottom, and has never since been heard from, though repeated efforts have been made by digging and boring to recover so valuable a piece of property. The bottom is quicksand, but even quicksands have limits, and it seems very singular that the longest boring rod has failed to find a trace of the sunken engine. By-and-by the silent, mysterious operation may drain the quicksand and harden it into rock, and then, long after the Kansas Pacific road has been forgotten and the Kiowa creek has vanished from the map, some future scientist will discover a curious piece of mechanism, undoubtedly the work of human hands, lying under so many hundred feet of sandstone, and will use the fact as a basis for calculating how many millions years old the human race must be.—*Boston Transcript*.

In a recent case, *Hardin v. Baptist Church*, 4 Ohio Law Jour., 24, the Supreme Court of Michigan held that a religious corporation has nothing to do with the church represented by it, except as it provides for its temporal wants; that it cannot alter the church faith or covenant, cannot receive or expel members, or prevent the church, as distinguished from the corporate body, from receiving or expel-

ling whomsoever that body may see fit to receive or expel, and consequently no action can be maintained against the corporation for an alleged expulsion of a member from the church. COOLEY, J. delivered the opinion of the court, and in a clear, concise statement presented the law governing the case. *Calkins v. Cheney*, 92 Ill., 463, a somewhat noted case in this state, is one of the authorities cited and relied upon in the opinion.

AN INTERESTING decision on the law applicable to communications by telephone is an unreported case in the Kentucky Superior Court, of which a brief abstract appears in 1 Ky. L. Rep. and Jour., 908, Sullivan, &c., v. Kuykendahl. It was there held that where an operator uses the instrument for another, repeating the answers made by the party at the other end of the line, he can testify that such a conversation was held, and if he states that he recognized the sound of the voice of the person with whom he was talking, he can testify as to what was said, but it is not competent for persons who were present to testify as to what the operator reported as the answers of the party at the other end of the line. Such testimony is mere hearsay.

*Instrument: Grant of easement cemetery; right of burial.*—Where an instrument is a simple certificate, not under seal acknowledged and recorded, it will not operate to grant an easement. Its only effect is to confer a privilege or license.

Whenever by lawful authority a cemetery ceases to be a place of burial, the lotholders' rights and privileges cease, except for the purpose of removing the remains previously buried.

When the corporation decides that the ground is no longer desirable as a place of interment, possessing the lawful power and authority so to determine, that decision operates to revoke the certificate or license, and the right of further interment is extinguished, and the lotholders have no cause of action against the grantee of the cemetery company or his assignee.

The fact that the sale by the cemetery company is a private one, and not made under a bill, filed according to the provisions of the act of 1868, chapter 211, makes no difference. The act of assembly only furnishes additional facilities for sale of abandoned burial grounds. [*William S. Raynor v. James E. Nugent et al. Maryland Court of Appeals.*]

*Landlord and tenant: Fixtures; machinery; pleading; trover.*—A refusal by the owner of the freehold, after he has taken possession up-

on the expiration and surrender of the term, to permit the former tenants to remove fixtures, which they have attached to the premises during the term, will not enable the latter to maintain trover for them against him.

Where a tenant, who has erected fixtures (machinery) upon his landlord's premises, surrenders possession and the term to his landlord, upon the latter giving a bond, conditioned for the forthcoming of the machinery, upon the determination of proceedings to try the right of property in the same, the surrender carries with it all its legal incidents, and an action of trover will not lie for the fixtures. [Darrah, Moore & Co. v. Baird. S. C., Pa.]

*Partition of Railroads; Not Allowed.*—The Supreme Court of Ohio holds, that railroads are not subjects of partition either at law or in equity; that the policy of the law requires the perpetuation of the ownership of a railroad in severalty without the power of alienation, and that when a tenancy in common of a railroad by two companies is permitted, such ownership in common is intended to be an ownership without power of partition, either amicable or through the intervention of the courts. The difficulty in ordering a partition arises chiefly from the fact that the public has an interest in maintaining the continuity of the road from terminus to terminus, in its character of a public highway. In the case under consideration, the object sought was a division of the track into portions, and the assignment of separate portions of the roadway to each of the joint owners. [P. C. & St. L. R'y. Co. v. C. O. R. R. Co. February 6, 1882.]

*Replevin; Title not to Pass Until Price Paid.*—Certain machinery was "loaned" under a written agreement to buy the same, title not to pass until the price was paid, and when all the terms and conditions were fulfilled a bill of sale was to be given. Held, that the creditors of the purchasers could not levy on the same before the title passed pursuant to the contract. [Sup. Ct. of Mich. Marquette Man. Co. v. Jeffery, 7 Virginia, L. J., 184.]

*Negligence; Injury to Child.*—In case of loss of service and expenses incurred in caring for and nursing plaintiff's child, injured by defendant's horse, plaintiff may recover for his own time spent in taking care of the child. Time spent by plaintiff stands on the same grounds as money paid by him for medical attendance or nursing. [Sup. Ct. of N. H. Connell v. Putnam. Opinion by Stanley, J. To appear in 58 N. H.]

## The Courts.

### EQUITY COURT.—Justice James.

SEPT. 17, 1883.  
Temple v. Worthington. Sale ratified nisi.  
In re petition of B. U. Keyser, receiver. Leave to compound indebtedness of George M. Kober.  
Voegle v. Voegle. Testimony ordered taken before examiner, J. A. Johnson.  
Prescott v. Ray. Appearance of absent defendant ordered.  
Roys v. Roys. Restoration of articles of clothing to complainant ordered.  
Crawford v. Crawford. Appearance of absent defendant ordered.  
Shoemaker v. Shoemaker. Reference to auditor ordered.  
Ridenour v. McClelland. Order appointing John G. Yost guardian ad litem.  
Jones v. Jones. Attachment ordered to issue.  
In re John H. Smith, lunatic. Order appointing Amanda Reed committee.

SEPT. 18, 1883.  
Reed v. Reed. Acceptance of order of Mary Tuller authorized.  
Starr v. Starr. Testimony ordered taken before examiner, John A. Clarke.  
Reiter v. Reiter. Testimony ordered taken before examiner, John F. Rely.  
McKenney v. McKenney. Testimony ordered taken before examiner, J. A. Johnson.  
Mitchell v. Peterson. Order allowing Richard W. Barker to become party complainant.  
Claggett v. White. Decree validating deeds of partition among the parties.  
Vincent v. Vincent. On hearing.

SEPT. 19, 1883.  
Shoemaker v. Shoemaker. Certain persons made parties and cause referred to the auditor.  
Norment v. Ward. Order appointing M. C. Barnard commissioner to make conveyance.  
Vincent v. Vincent. On hearing.

SEPT. 21, 1883.  
Weggeman v. Weggeman. Additional reference to the auditor.  
Marr v. Barry. Testimony of non-resident ordered.  
Clark v. O'Hara. Appearance of absent defendant ordered.  
Turner v. McGowan. Order appointing John Usher guardian ad litem.  
Michel v. Michel. Testimony ordered taken before examiner L. C. Williamson.  
Boswell v. Boswell. Divorce decreed.  
Butler v. Scott. Order allowing John J. Knox to intervene.

### CIRCUIT COURT.—New Suits at Law.

SEPT. 17, 1883.  
24749. Mary Ryan v. John Batters. Note, \$444. Piffs attys, Birney & Birney.  
24750. William F. Geyer v. Daniel J. Barrick. Notes and account, \$150. Piffs atty, C. A. Walter.  
24751. Gardner & Co. v. John G. Thompson et al. Note, \$1,000. Piffs attys, Edwards & Barnard.  
SEPT. 18, 1883.  
24752. Joseph M. Burke v. Catharine Burke. Replevin. Piffs atty, N. H. Miller. Defts atty, P. B. Sullivan.  
SEPT. 19, 1883.  
24753. Mary Cavanaugh v. Thomas W. Smith. Damages, \$5,000. Piffs atty, C. Carrington.  
24754. Snowelm & Riva v. Stephens B. Robbins. Foreign judgment, \$3,750.45. Piffs attys, H. O. & E. Claughton.  
SEPT. 20, 1883.  
24755. Samuel Crossie Soma v. John T. Scrivener. Notes and account, \$249.73. Piffs atty, W. D. Caslin.

24756. Herman O. Ewald v. The District of Columbia. Appeal. Defts atty, F. Miller.  
 24757. John A. Schneider v. Emmerich Carstius. Judgment of Justice Taylor, \$43. Pliffs atty, John P. Anderson.  
 24758. Strang & Tucker v. Matthew Goddard. Judgment of Justice Mills, \$34.25. Pliffs atty, F. T. Browning.  
 24759. The Northern Liberty Market Co. v. John H. Glick. Notes, \$507.35. Pliffs atty, J. J. Darlington.

24760. William H. Brown et al. v. James B. Adams. Damages, \$600. Pliffs attys, Miller and O'Brien.

24761. The District of Columbia v. Thomas E. Waggaman et al. Bond, \$5,000. Pliffs atty, A. G. Riddle.

24762. Same v. Charles B. Caywood et al. Bond, \$5,000. Pliffs atty, same.

24763. Same v. F. E. Middleton et al. Bond, \$5,000. Pliffs atty, same.

24764. Same v. William E. Burford et al. Bond, \$5,000. Pliffs atty, same.

24765. Same v. Edward D. Wright et al. Bond, \$5,000. Pliffs atty, same.

24766. Same v. William O. Denison et al. Bond, \$5,000. Pliffs atty, same.

24767. Same v. Enoch M. Lowe et al. Bond, \$5,000. Pliffs atty, same.

24768. Same v. Lorin M. Saunders et al. Bond, \$5,000. Pliffs atty, same.

24769. Wallace W. Kirby v. David K. Cartter. Slander, \$20,000. Pliffs atty, P. P.

24770. Frank Springmann v. The Baltimore & Potomac R. R. Co. Pliffs atty, L. Kent.

#### IN EQUITY.—New Suits.

5707. Alice O. Crawford v. William Crawford. For divorce. Com. sol., John A. Clarke.

5708. James Fraser et al. v. Seymour Ray et al. To correct defective acknowledgment, &c. Com. sol., Thomas H. Callan.

5709. James B. Edwards v. Margaret Kennedy et al. To sell. Com. sols., Hanna & Johnston.

5710. Charles Carroll v. Letha Carroll. To annul marriage. Com. sol., C. Carrington.

5711. Mary E. Clark v. Anna O'Hara et al. To perpetuate testimony.

5712. Martin Keif v. William L. Bramhall et al. To quiet title, lot w.  $\frac{1}{2}$  s. square, 750. Com. sol., J. G. Bigelow.

5713. Solomon Sugenheimer v. Eliza Brown et al. For conveyance. Com. sol., E. B. Hay.

5714. Henry Strang et al. v. Mathew Goddard et al. Com. sol., F. T. Browning.

5715. Anthony Hyde et al. v. Edward Fitzgerald et al. Interpleader. Com. sols., Carusi & Miller.

#### PROBATE COURT.—Justice James.

Estate of Joshua Riley; citation against heirs returned served.

Will of William H. Allyn filed, admitted to probate, and record and letters testamentary issued to W. H. H. Smith and Mary B. Smith on bond of \$400.

Estate of John B. Millard; proof of publication filed.

Estate of Caroline E. Birth; final notice issued to the executors.

Estate of Rexin A. Miller; order directing the widow to pay to the administrator the amount of three bonds described in petition.

Estate of F. rank Hagerty; order setting aside approval of administrator's account with leave to file exceptions.

Estate of Robert Swift; order of publication issued.

Estate of James Turnbull; administrator's bond approved.

Estate of Andrew Agan; administrator's bond of \$1,000 approved.

Estate of Patrick Egan; bond of administrator for \$1,000 approved.

Estate of George A. Heekel; administrator's bond in the sum of \$300 approved.

Estate of Nicholas Johnson; proof of publication filed and orders appointing Benjamin F. Rittenhouse administrator in each of the above cases.

Estate of Maria Southron; order directing the payment of certain claims.

In re James H. Marr, guardian; order increasing monthly allowance to wards.

Estate of R. T. Shaw; petition of Robert A. Phillips, surviving executor, for additional allowance.

#### Legal Notices.

##### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Egan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883.  
 RICHARD F. HARVEY, 921 7th street, n. w.  
 WM. H. DENNIS, Solicitor. 30-3

##### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Weaver, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.  
 AUGUSTA M. WEAVER, Executrix. 30-5

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. September 21, 1883.

In the case of Wm. W. Birth and Brenton L. Baldwin, Executors of Caroline E. Birth, deceased, the Executors aforesaid have, with the approval of the court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares [or legacies] or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
 A. B. DUVAL, Solicitor. 30-3

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 21, 1883.

In the matter of the Estate of Robert Swift, late of the Island of St. Thomas, in the Danish West Indies deceased. Application for Letters of Administration on the estate of the said deceased has this day been made by John St. O. Brookes.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published twice in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: 30-2 H. J. RAMSDELL, Register of Wills.

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.

ISABELLA DODSON  
 v.  
 JAMES H. DODSON.

On motion of the plaintiff, by Mr. W. Preston Williamson, her solicitor, it is ordered that the defendant, James H. Dodson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 30-3 E. J. MEIGS, Clerk.

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1883.

MARY EUNICE CLARK  
 v.  
 ANNA O'HARA ET AL.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Susan O'Hara, Virginia O'Hara, George E. O'Hara and Julia Eddy nee O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. 30-3 Test: E. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of September, 1883.**

ALICE C. CRAWFORD

No. 8707. Eq. Dec. 23.

WILLIAM CRAWFORD.

On motion of the plaintiff, by Mr. John A. Clarke, her solicitor, it is ordered that the defendant, William Crawford, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 38-3 Test: R. J. MEIGS, Clerk.

**CHANCERY SALE OF VALUABLE UNIMPROVED REAL ESTATE NEAR THE CAPITOL, BEING ALL OF SQUARE FIVE HUNDRED AND SEVENTY-EIGHT.**

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Special Term in Equity, in cause number 8424, Equity Docket 22, wherein Henry K. Willard is complainant, and Andrew Wylie and others are defendants, which decree was passed September 5th, A. D. 1883.

We will, on Tuesday, October 9th, A. D. 1883, commencing at the hour of 3 P. M., in front of the premises, offer at public sale, square five hundred and seventy-eight [578], in the city of Washington. This square will be sold in lots according to the subdivision filed in said cause, and which will be exhibited at the time of sale.

Terms of sale as prescribed by said decree are one-third of the purchase money in cash and the balance in six and twelve months from day of sale; for the deferred payments the purchaser or purchasers shall give their notes, drawing six per cent. interest per annum, secured by deed or deeds of trust on the property purchased.

All conveyancing at the cost of the purchaser or purchasers.

A deposit of fifty dollars [\$50] on each lot must be made when the property is knocked down.

JOHN C. HEALD,  
501 F street N. W.  
HENRY WISE GARNETT,  
No. 2 Columbia Law Building.

Trustees

DUNCANSON BROS., Auctioneers. 38-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

EDWARD TEMPLE ET AL.

Equity. No. 7767.

CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot twenty-eight (28), in square one thousand (1000), to Richard T. Pettit for \$26; lots three (3), five (5) and thirteen (13), in square six hundred and eight (608), for \$168.76; lot seven (7), in square six hundred and ten (610), for \$30; and lot ten (10), in square six hundred and ten (610), for \$40, to B. H. Warner; lot sixteen (16), in square six hundred and ten (610), for \$75; and the south one-half (1/2) of lot seventeen (17) in the same square, for \$27.50 to N. W. Burchell; lot eight (8), in square six hundred and eleven (611), for \$62.50 to William B. Webb; lot eight (8), in square six hundred and thirteen (613), for \$50; lot seventeen (17), in square six hundred and seventeen (617), for \$25; lot 3 (3), in square east of square six hundred and sixty-four (664), for \$40; lot four (4), in square south of square six hundred and sixty-seven (667), for \$80; lots nine (9) and ten (10), in square east of south of square six hundred and sixty-seven (667), for \$34 each lot; lots twenty-two (22), twenty-three (23), twenty-six (26) and twenty-seven (27), in square south of square six hundred and forty-three (643), for \$200; lots three (3) and twenty-two (22), in square six hundred and forty-two (642), for \$324; lot eight (8), in square east of square six hundred and forty-two (642), for \$750; lot eight (8), in square seven hundred and eight (708), for \$50; lot six (6), in square eighty-eight (88), for \$51; and lot nineteen (19), in same square, for \$100; lot one (1), in square six hundred and nine (609), for \$75; lot five (5), in square six hundred and three (603), for \$65; and lot five (5), in square six hundred and sixty-two (662), for \$75, all to Augustus Burgdorf; and lot fifteen (15), in square eight hundred and seventy-eight (878), subject to all taxes, to B. H. Warner for \$100. And it appearing to the court that the order passed in this cause on the 30th day of July, A. D. 1883, conditionally ratifying these sales, has not been published as therein required, it is, by the court, this 17th day of September, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of October, 1883: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 17th day of October, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 38-3 E. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

IN BANKRUPTCY.

In the Matter of THOMAS B. ENTWISLE and GEORGE O. BARRON, individually and as co-partners under the firm name of ENTWISLE & BARRON.

Case No. 241.

Upon consideration of the report of James S. Edwards, assignee of Thomas B. Entwisle and George O. Barron, and of the firm of Entwisle & Barron, bankrupts, filed herein on the 15th day of September, 1883, submitting a proposition, or offer, on the part of the said Thomas B. Entwisle and Mary M., his wife, to compromise the suit brought against them by said assignee in this court, being Equity Cause No. 6452, upon the terms in said report mentioned:

It is this 15th day of September, A. D. 1883, ordered, adjudged and decreed, that the said compromise settlement be confirmed, on the terms stated in said report, on the 17th day of October next, unless cause to the contrary be shown on or before that date: Provided a copy of this order be published once a week for three successive weeks in the two newspapers known as the "Evening Star" and the "Washington Law Reporter," printed and published in the city of Washington, in the District aforesaid, before said last mentioned date.

By the Court. D. K. CARTER, Chief Justice.  
A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of September, 1883.**

JOHN A. PRESCOTT AND JAMES FRASER, Trustees.

No. 8706. Eq. Dec. 23.

SEYMOUR RAY AND MELINDA J. RAY, his wife, VINCENT RAY, SYLVESTER H. RAY, AUGUSTUS F. RAY, LEWIS RAY and FRANK R. RAY.

On motion of the plaintiffs, by Mr. Thos. H. Callan, their solicitor, it is ordered that the defendants, Seymour Ray and Melinda J. Ray, his wife, Vincent Ray, Sylvester W. Ray, Augustus F. Ray, Lewis Ray and Frank R. Ray, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.**

THE NATIONAL UNION INSURANCE CO.

No. 8664. Eq. Dec. 23.

JOHN B. TYLER AND OTHERS.

On motion of the plaintiff, by Mr. A. S. Worthington, its solicitor, it is ordered that the defendants, Albert O. S. Reiley, Thomas B. Bryan, Margaret Heisel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 38-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jonathan Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of August, 1883.

JOSEPHINE E. TAYLOR.

WASHINGTON DANENHOWER.

FRANK T. BROWNING, Solicitor

36-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. September 7, 1883.**

In the case of Charles A. Walter, Executor, of Catharine Boyd, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 25th day of September, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 36-3 H. J. RAMSDELL, Register of Wills.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 14, 1883.**

In the matter of the Will of Mary Jaffrey Field, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Richard Crowther.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **87-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of September, 1883.**

**EMMA J. HIGH**

**v. HENRY HIGH.**

No. 8692. Eq. Doc., 23

On motion of the plaintiff, by Mr. A. A. Lipscomb, her solicitor, it is this 11th day of September, ordered that the defendant, Henry High, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: **87-3 R. J. MEIGS, Clerk, &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of September, 1883.**

**JOHN ADAMS**

**REUBEN B. CLARKE, JOHN WELSH**  
**AND FELICIA E. WELSH.**

No. 8701. Eq. Doc. 23.

On motion of the plaintiff, by Mr. Robert J. Murray, his solicitor, it is ordered that the defendants, John Welsh and Felicia E. Welsh, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **87-3 E. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles L. Vertongen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1883.

**LUCIEN E. O. COLLIERE, Administrator.**

**HANNA & JOHNSTON, Solicitors.** 87-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John B. Ruth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of September, 1883.

**MARIA RUTH, Executrix.**

**CHARLES A. WALTER, Solicitor.** 87-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 14, 1883**

In the case of Martin Becker, Executor of Michael Henry Becker, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 5th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**EDWARDS & BARNARD, Solicitors.** 87-3

*Legal Notices.*

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Wilson, alias Mary Sayre, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1883.

**REBECCA HINTON, Administratrix.**

**A. C. RICHARDS, Solicitor.** 87-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 14, 1883.**

In the case of Martin F. Morris, Executor of Maria Southron, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 5th day of October, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise, the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

87-3 Test: **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bernhard Berens, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**MAGDALENA BERENS, Ex'r.**

**WARREN C. STONE, Sol'r.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.**

**THOMAS B. OERSLEY**

**v.**

**LUCY J. OERSLEY.**

No. 8640. Eq. Doc. 23.

On motion of the plaintiff, by Mr. J. A. Smith, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **86-5 R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of September, A. D. 1883.**

**POWER ET AL.**

**v.**

**WALSH ET AL.**

Equity Docket No. 22. (Cause No. 8028.)

Rutledge Willson, trustee, having this day reported that he made sale on the 7th day of July, A. D. 1883, of lot numbered (28) twenty-six of the recorded sub-division of original lots numbered (1) one, (2) two, (3) three, (4) four, (17) seventeen, (18) eighteen and (19) nineteen, in square numbered (511) five hundred and eleven, to Brainard H. Warner, for the sum of \$635 50, or 25 cents per square foot: It is, this 4th day of September, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 6th day of October, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said 6th day of October, 1883.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **86-8 R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. C. DuHamel, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**ELIZABETH H. DUHAMEL,**

**W. K. DUHAMEL, Solicitor.** 86-8

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court  
Business. September 7, 1883.

In the matter of the Will of Josiah Curtis, M. D., late of  
the District of Columbia, who died at London, deceased.

Application for the probate of the last Will and Testa-  
ment and for Letters Testamentary on the estate of the  
said deceased has this day been made by Levi Curtis, of  
Philadelphia, Penn.

All persons interested are hereby notified to appear in  
this court on Friday, the 28th day of September next, at 11  
o'clock a. m., to show cause why the said Will should not  
be proved and admitted to Probate and Letters Testamen-  
tary on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once a  
week for three weeks in the Washington Law Reporter  
previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: 36-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

**KATIE F. SAGE ET AL. } Equity. No. 8477.**

**MARY E. SAGE ET AL. }**  
John E. McNally and Edwin B. Hay, trustees, having  
reported that they have sold sub-lot 14, in Hoffmann's  
recorded sub-division of original lot 2, in square 677, with the  
improvements thereon, in the city of Washington, District  
of Columbia, to Hugh Donohoo, for the sum of \$1,779:

It is, this 4th day of September, A. D. 1883, ordered, that  
the said sale will be finally ratified and confirmed on the  
6th day of October, A. D. 1883, unless cause to the contrary  
be shown on or before said day.

Provided, a copy of this order be published once a week  
for three successive weeks before said day.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

**EDA ANN DALLAS } Equity. No. 8568.**

**OLIVER C. DALLAS ET AL. }**  
The trustee in this cause having reported to the court  
that he has sold the real estate mentioned and described in  
these proceedings to Mary A. Murphy, and that the terms of  
sale have been complied with: It is, this 4th day of Sep-  
tember, A. D. 1883, ordered, that the sale be ratified unless  
cause to the contrary thereof be shown on or before the 6th  
day of October, A. D. 1883. Provided, a copy of this order  
be published in some newspaper in the city of Washington  
once a week for three weeks before said 6th day of October  
next.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
True copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

**MARY T. DAYTON ET AL. } In Equity. No. 7801.**

**CORNELIA H. DAYTON ET AL. }**  
On consideration of the report of James M. Johnston,  
trustee, filed in this cause on this day: It is, by the court  
this 4th day of September, 1883, ordered, that the sale re-  
ported by him be ratified and confirmed unless cause to  
the contrary be shown on or before October 1, 1883. Pro-  
vided, the usual notice be printed in the Washington Law  
Reporter for two weeks. It is, further ordered, that said  
trustee sell the notes to be given by L. P. Shoemaker and  
A. F. Fox, for the face value thereof and as proposed in  
said trustees' report.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding an Equity Court, the 4th day of  
September, 1883.

**NICHOLAS WEGGEMANN } No. 8675. Eq. Doc.**

**FRANCIS H. WEGGEMANN ET AL. }**  
Ordered, that the sales made and this day reported by  
John F. Hanna and Reginald Fendall, trustees for the sale  
of the real estate in this cause, be ratified and confirmed  
unless cause to the contrary thereof be shown on or before  
the 6th day of October, next. Provided, a copy of this order  
be inserted in some newspaper printed and published in  
said district once in each of three successive weeks before  
said day.

The report states that the south part of sub-lots 19 and  
20, being 31 feet 3 1/4 inches front, sold for \$4,106; and that  
the north part, being 16 feet 8 1/4 inches front, sold for \$3,000.  
By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia  
hath obtained from the Supreme Court of the District  
of Columbia, holding a Special Term for Orphans' Court  
business, Letters of Administration on the personal estate  
of Carl Emil Worth, late of the District of Columbia,  
deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 27th day of August  
next; they may otherwise by law be excluded from all  
benefit of the said estate.

Given under my hand this 27th day of August, 1883.

**CHRISTIAN WORTH.**

**CHARLES WALTER, Solicitor.**

35-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business. September 14, 1883.

In the matter of the Estate of Elmore W. Tuttle, late of  
the District of Columbia, deceased.

Application for Letters of Administration on the estate  
of the said deceased has this day been made by John B.  
Dunning.

All persons interested are hereby notified to appear in  
this court on Friday, the 6th day of October, 1883, next, at 11  
o'clock a. m., to show cause why Letters of Administration  
on the estate of the said deceased should not issue as  
prayed. Provided, a copy of this order be published once  
a week for three weeks in the Washington Law Reporter  
previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**JOHN J. WEED, Solicitor.**

37-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath  
obtained from the Supreme Court of the District of Colum-  
bia, holding a Special Term for Orphans' Court business,  
Letters Testamentary on the personal estate of Ida K.  
Davie, late of the District of Columbia, deceased.

All persons having claims against the said deceased are  
hereby warned to exhibit the same, with the vouchers there-  
of, to the subscriber, on or before the 14th day of Sep-  
tember next; they may otherwise by law be excluded from  
all benefit of the said estate.

Given under my hand this 14th day of September, 1883.

**ROBERT G. DYRENFORTH, Executor.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia,

**FLORENCE B. KOONES ET AL. } Equity. No. 7706.**

**PHOEBE A. L. BUDD ET AL. }**  
Frederick Koones, trustee, having reported that he has  
sold part of lots 24 and 25, of Kennedy and Webb's sub-  
division (recorded) of part of original lot one (1), in square  
No. 618, with the improvements thereon, in Washington  
City, District of Columbia, and particularly described in  
these proceedings, to Sue B. Ker, for the sum of \$685:

It is, this 4th day of September, A. D. 1883, ordered, that  
the said sale will be finally ratified and confirmed on the  
6th day of October, A. D. 1883, unless cause to the contrary  
be shown on or before said day.

Provided, a copy of this order be published once a week  
for three successive weeks before said day in the Wash-  
ington Law Reporter.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.

**PATSEY JOHNSON } No. 5683. Equity Docket 23.**

**STEPHEN D. JOHNSON. }**  
On motion of the plaintiff, by Mr. R. B. Lewis, her  
solicitor, it is ordered that the defendant, Stephen D.  
Johnson, cause his appearance to be entered herein on or  
before the first rule-day occurring forty days after this day;  
otherwise the cause will be proceeded with as in case of  
default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 4th day of September, 1883.

**ALBIGNCE H. BROWN } No. 24,674. At Law.**

**BRADLEY BARLOW. }**  
On motion of the plaintiff, by Mr. J. J. Weed, his  
attorney, it is ordered that the defendant, Bradley Barlow,  
cause his appearance to be entered herein on or before the  
first rule-day occurring forty days after this day; otherwise  
the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 36-3 **R. J. MEIGS, Clerk.**



# Washington Law Reporter

WASHINGTON - - - - - September 29, 1883

GEORGE B. CORKHILL - - - EDITOR

## Lord Coleridge.

A special meeting of the Bar Association of the District of Columbia was held at the City Hall, on Monday, the 24th inst., to take action respecting the entertainment of Lord Chief Justice Coleridge on his contemplated visit to this city. The chair, Mr. M. F. Morris, stated that, anticipating the wishes of the Association, because of the limited duration of his lordship's intended stay, he had communicated to his lordship the desire of the Association to tender him some testimonial of its respect, in the following letter:

WASHINGTON, D. C., Sept. 7, 1883.

To the RIGHT HON. JOHN DUKE, LORD COLERIDGE,

*Lord Chief Justice of England.*

MY LORD: As President of the Bar Association of the District of Columbia, and on behalf of that Association, I beg leave to state to your Lordship that its members desire to testify their personal esteem for your Lordship and their respect for your Lordship's exalted position as Lord Chief Justice of England. The members of our Bar Association earnestly hope that it is within the scope of your Lordship's purpose to visit the city of Washington; and I am authorized to say that, in that event, it will give them great pleasure to be permitted to pay their respects to your Lordship and to tender to your Lordship such reception as may be fitting to honor one who honors the highest judicial station of our mother country.

With sentiments of the highest esteem, I subscribe myself, your Lordship's most obedient servant,

M. F. MORRIS,

*President Bar Association, D. C.*

To this he had received the following reply:

BOSTON, MASSACHUSETTS,

10th September, 1883.

SIR: I have the honor to acknowledge and to thank you for your letter of the 7th of September, which reached me here this morning. I need hardly say that it is always gratifying and interesting to me to meet my brothers of the law, whether in this country

or in my own. What is true of any collection of lawyers is emphatically true of the lawyers of the capital of this great country. I shall, I hope, visit Washington towards the end of October; but whether I shall have a day at my disposal must depend on circumstances not within my own command. May I therefore be permitted to leave the matter vague at present, saying only that I earnestly hope to be able to attend the reception with which you propose to honor me at some time during my stay in Washington.

Believe me to be, sir,

Your obliged and faithful servant,

COLERIDGE.

M. F. MORRIS, Esq.

To which he in turn had responded as follows:

WASHINGTON, D. C., Sept. 12th, 1883.

To the RIGHT HON. JOHN DUKE, LORD COLERIDGE,

*Lord Chief Justice of England.*

MY LORD: I have the honor to acknowledge the receipt of your Lordship's letter of the 10th instant, in answer to mine of a previous date. Renewing the assurance of the high esteem of the Bar Association of the District of Columbia for your Lordship, I have to say, in reply to your Lordship's letter, that we will hold ourselves at your Lordship's pleasure and convenience in reference to the reception which we hope to have the opportunity of tendering to your Lordship.

With highest esteem and regard, your Lordship's obedient servant,

M. F. MORRIS,

*President Bar Association, D. C.*

Thereupon the following resolution was, on motion of Mr. A. Porter Morse, adopted:

*Resolved*, That the Bar Association of the District of Columbia has learned with gratification of the proposed visit to the National Capital of Lord Chief Justice Coleridge, of England;

*Resolved*, That a committee of seven be appointed by the chair to make the necessary arrangements for the welcome, reception and entertainment of his lordship and suite at such time and place and in such manner as may be agreeable and convenient.

Messrs. R. T. Merrick, Samuel Shellabarger, Wm. A. Maury, Walter D. Davidge, J. Hubley Ashton, Jas. G. Payne and A. Porter Morse, were appointed as the committee.

It is understood that the distinguished visitor will arrive at this city, between the 18th and 23d of October.



# Supreme Court District of Columbia

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKAY.

FIFTH BAPTIST CHURCH

vs.

BALTIMORE & POTOMAC R. R. Co.

LAW NO. 17,470.

{ Decided June 5, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and COX sitting.

1. Plaintiff recovered in the circuit court of this District, a judgment in an action of tort. On appeal to the Supreme Court of the United States, the judgment was affirmed with costs and interest, until paid, "at the same rate per annum that similar judgments bear in the courts of the District of Columbia."

*Held*, that these words are not to be taken as directing an inquiry into the character of the action in which the judgment below was rendered but merely as indicating that the rate *per centum*, at which the interest must be computed, shall be no higher or lower than the legal rate in the jurisdiction where the judgment was originally recovered.

2. And it seems, per Hagner, J., that a judgment founded on tort, recovered in the courts of this District, bears interest from its rendition to its satisfaction.

The CASE is stated in the opinion.

J. J. DARLINGTON for plaintiff.

ENOCH TOTTEN for defendant.

MR. JUSTICE HAGNER delivered the opinion of the court.

In June, 1879, the plaintiff recovered a judgment against the defendant in the Circuit Court, in an action of tort, which was affirmed by this court in General Term. An appeal was taken to the Supreme Court of the United States which, at the October Term, 1882, passed the following order:

"Whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel: On consideration whereof: It is now here ordered and adjudged by this Court, that the judgment of the said supreme court, in this cause, be, and the same is hereby affirmed with costs and interest, until paid, at the same rate per annum that similar judgments bear in the courts of the District of Columbia."

Upon the reception of this mandate by the court of the District, the defendant tendered payment of the judgment and costs without interest, but the plaintiff refused to receive

this amount unless the defendant should also pay interest from the date of the recovery of the judgment in the circuit court of the District of Columbia. The defendant thereupon filed a petition to the General Term in which it offered to bring into court the amount of the judgment and costs, and prayed that an order should be made entering the judgment satisfied upon the payment of the amount thus tendered.

It is contended, upon the part of the defendant: First, that under the language of the mandate, the lower court is required to examine into the nature of the action and ascertain whether it is one in which a plaintiff is entitled to interest from the rendition of the judgment; as *in such cases only* can interest be added, according to the order of the Supreme Court; and, Second, that according to the law and practice of the courts of the District of Columbia, interest is not chargeable in an *action of tort*, like the present.

In our opinion, the words relied on, "at the same rate per annum, that similar judgments bear in the courts of the District of Columbia," are not to be taken as directing an inquiry into the character of the action in which the judgment below was rendered, but merely as indicating that the *rate per centum*, at which the interest must be computed, shall be no higher or lower than the legal rate in the jurisdiction where the judgment was originally recovered.

And this appears clearly from the statutes and from the rules of the Supreme Court bearing upon the subject.

Nothing could be more obviously just than that something in the way of penalty or additional costs should be applied, in the discretion of the appellate court, to deter frivolous appeals. Unless such power existed, the losing party would have every motive for an appeal, and none for acquiescing in the judgment below. And this would be especially the case where the judgment grew out of a personal action founded in tort, where, at common law, the death of either party would cause an abatement of the action. Accordingly, at a very early day in England, (1486), the statute 3 Henry VII, ch. 10, was passed, in these words:

"Item, That where oftentimes plaintiff or demandant, plaintiffs or demandants, that have judgment to recover, be delayed of execution, for that the defendant or tenant, defendants or tenants, against whom judgment is given, or other, that been bound by the said judgment, sueth a writ or writs of error to annul and reverse the said judgment, to the

intent only to delay execution of the said judgment: It is enacted, &c., . . . that if any such defendant or tenant, defendants or tenants, or any other, that shall be bound by the said judgment, sue, afore execution had, any writ of error to reverse any such judgment, in delaying of execution, that then if the same judgment be affirmed good in the said writ of error, and not erroneous, or that the said writ of error be discontinued in the default of the party, or that any person or persons that sueth writ or writs of error, be nonsued in the same, that then the said person or persons, against whom the said writ of error is sued, shall recover his *costs and damages* for his delay and wrongful vexation in the same, by discretion of the justice before whom the said writ of error is sued."

At common law, no costs were allowable on a writ of error, and as there were no damages, strictly speaking on a writ of error, but only a reversal or affirmance of the judgment, it was evident that the expression "costs and damages" was intended to give new penalties not previously existing. The fact that all interest was considered usurious and illegal until the reign following the passage of this act may explain the indisposition of the courts to carry into effect its provisions by allowing interest by way of damages upon the affirmance of a judgment. This unwillingness of the judges was very clearly evinced by the passage of a subsequent act, the 19 Henry VII, chap. 20, which recites the passage of the former statute at length, and then proceeds as follows: "Which act or ordinance hath not been as yet duly put in execution, by reason whereof, as well plaintiffs as demandants, in divers actions by them sued sith the making of the said statute, have been oftentimes delayed of their execution, to their great and importable hurt, loss and charges; Wherefore, the King, our sovereign lord, by the advice of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, ordaineth, establisheth and enacteth, that the said act made the third year of his reign, concerning the premises, be good and effectual, and that from henceforth, it be duly put in execution."

Both of these statutes were in force in Maryland. [Kilty, p. 228-30.]

Mr. Sellon, vol. 2, p. 446, says:

"It is observable that the statute of Henry VII, particularly mentions costs *and damages*, clearly showing that the legislature intended something more than the mere costs. And indeed were it otherwise, it might often be advantageous to the party against whom judg-

ment is obtained, to delay execution by writ of error, even upon payment of the costs, inasmuch as if the amount of such judgment were considerable, the very interest of the money, by delay of payment, might exceed the costs in the writ of error; for this reason, therefore, interest from the time of signing the judgment until the affirmance thereof, is now generally allowed and added to the costs by way of damages."

In 1781, in the case of *Zinck v. Lancton*, Douglass, 749; Lord Mansfield said that the word "damage," in the statute, must mean something different from costs as both words are used, and that the interest ought to be the measure of such damage; and a rule was made absolute that the master should compute interest on the verdict from the day of signing final judgment below down to the time of the taxation of costs on the affirmance of the judgment after error brought.

And in *Entwisle v. Shepherd*, 2d Term Rep. 78, decided in 1787, which was an action brought on a judgment recovered in the Common Pleas, Buller, J., said: "Under the statute of Henry VII, it is now settled that the party has to pay interest on the judgment; and provided by the course of the court interest is not computed in the allowance of costs, the jury would give interest in the name of damages."

This was the state of the law in England when the act of Congress of 1789 was passed, which declared, sec. 1010 Rev. Stats., "where, upon a writ of error, judgment is affirmed in the Supreme Court or a circuit court, the court shall adjudge to the respondent in error just damages for his delay and single or double costs at its discretion."

In execution of this statutory provision, the Supreme Court originally adopted a rule fixing the "damages" in the form of interest at six per cent., except under special circumstances, where the rate was fixed at ten per cent. And in 3 Peters, 431, the Court reformed a judgment rendered at a previous term, where the interest had been omitted, so that the judgment should read thus: "It is adjudged and ordered by this Court, that the judgment of said circuit court in this case be, and the same is hereby, affirmed with costs and damages at the rate of six per centum per annum."

This rule, giving a uniform rate of six per cent. interest without reference to the law in the State from which the appeal was taken, worked injustice in those jurisdictions where the rate of interest exceeded that per centum, and this matter being brought to the attention of the court, in 8 Wheaton, 691, Sneed

v. Wister, and in other cases, the rule was modified, at the December Term, 1851, to read as follows:

No. 62. "In cases where a writ of error is prosecuted in the Supreme Court and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered." "The same rule shall be applied to decrees for the payment of money in cases in chancery, unless otherwise ordered by this court."

This last rule was considered by Mr. Chief Justice Taney, in the case of *Hemmenway v. Fisher*, 20 How., 255, in which he says: "By this last mentioned rule, judgments at common law and decrees in chancery, upon affirmance in this court, carry interest until paid; and the interest is to be calculated according to the rate of interest allowed in the State in which the judgment or decree of the court below was given."

This construction of the statute and rule is that which is adopted by Mr. Curtis in his *Commentaries*, sec. 396. No distinction is made in this statute or in the rules of the Supreme Court as to the character of the action on which the judgment is rendered. The object of the interest by way of damages is to give the appellee just damages for his delay, and it is obvious that a greater necessity exists for discouraging appeals in actions *in personam*, for the reasons we have heretofore assigned, than in actions brought upon contracts where the suit can be continued notwithstanding the death of the party plaintiff.

In our judgment the rule was intended to apply to all cases of appeals, at law or in equity, whatever may have been the form of the action.

Second. Speaking for myself alone, I will further say, that if the propriety of the charge of interest on this judgment were dependent upon the character of the action, I have no doubt, in that event, equally, the plaintiff was entitled to recover interest on this judgment from the time of its rendition, at the rate of six per cent.

It is argued, first, that interest was not chargeable at common law on a judgment in tort. This is true, and it was equally true, at the common law, with respect to all judgments on contracts, and so remained until the 37 Henry VIII, ch. 9, which repealed the existing laws that denounced all reception of interest as usury. But from a very early day in Maryland, interest was computed upon judgments, and, so far as I can see, without

respect to the character of the action.

Naturally, the books of reports of the appellate courts would seldom set forth the form of such entries in the lower courts; but they do contain some cases on the subject.

Thus in *Hook v. Boteler*, 3 H. & McH., decided in 1793, a judgment was recovered under the act of 9 Anne, ch. 14, which gave an action to recover back money won at gaming, where over £10 were lost at a sitting. The action was in no sense founded upon contract, but was a statutory remedy to recover the money lost. The verdict was for the defendant, under the instruction of the court, but it was reversed in the court of appeals and judgment entered for £120 damages and costs, which damages were represented by interest upon the judgment.

So in *Howard v. Warfield*, 4 H. & McH., 38, decided in 1797.

These cases were before the cession of the District by Maryland. The early Maryland cases, about the time of the cession, seem to admit the correctness of this practice, without reference to the form of action. *Contee v. Findlay*, 1 H. & J., 381 (1802); *Johnson v. Goldsborough*, *Ibid.*, 499 (1804).

We were referred to the act of June 24, 1812 (Sec. 829 R. S. D. C.), as the earliest authority for the addition of interest upon any judgment in the courts of the District. That act provided, "upon all judgments rendered on the common law side of the court, in actions founded on contracts, interest at the rate of six per centum per annum shall be awarded on the principal sum due until the judgment shall be satisfied; and the amount which is to bear interest, and the time from which it is to be paid, shall be ascertained by the verdict of the jury sworn in the case;" and it is insisted that no right to allow interest on judgments existed before the passage of that act, and that it contains a distinct limitation of the allowance of interest to "actions founded on contracts."

What was the object of the legislature in passing this statute, we can only conjecture. It may have been because the existing practice here was unknown to Congress; or because a different practice prevailed in the courts in the two portions of the District; or because the interest had been entered in different ways upon judgments rendered in the courts in the Maryland territory. Certain it is that it was not the origin of the practice of allowing interest upon judgments in those courts held in Washington city. We have examined the earliest dockets of the circuit court, accessible at this time—those of 1802—and we find that judgments were constantly

entered, at that period, with an allowance of interest, in some cases from a date previous to the suit, and in others from the date of the judgment. The act of 1812, then, was not the origin of the practice, nor do I see that it implies a negation of the right to interest upon judgments not founded upon contract. It only secures to the jury the power to allow interest in that class of cases from a date previous to the judgment; but it leaves the computation in actions of tort where, as I think, it had previously been, to be reckoned from the date of the judgment.

Justices of the peace within the District have jurisdiction in a large class of civil cases, whether in debt or damage, or injury to person or property, and they are required to enter their judgments in dockets which they are obliged to keep. By section 1007 R. S. D. C., their "judgments shall bear interest from their date until satisfied," and this by virtue of the act of March, 1823. No distinction is here made between judgments recovered in variant forms of action. The language embraces *all* judgments whether sounding in contract or tort. And no good reason can be perceived why a different rule should prevail with respect to judgments rendered by justices of the peace and those rendered by the superior courts of the District, especially as the judgment of the justice may become, by appeal, the judgment of the Supreme Court of the District. We should expect to find symmetry rather than needless disagreement between essential parts of the same system; and the explicit language of section 1007 must certainly go far towards clearing up any doubts as to the proper form of judgments in this court.

And the language of our rule, No. 70, seems to recognize no difference between the form of entry of a judgment in contract and tort. Its language is: "*Whatever the cause of action may be, if the judgment be for the recovery of money, it shall be awarded generally, without any distinction of debt from damages, thus: 'It is considered that the plaintiff recover against the defendant \$—, with interest, as aforesaid,' &c.*"

But I consider that the language of section 713 R. S. D. C. is almost conclusive of the question. It declares (speaking in 1870) that "the rate of interest on judgments or decrees . . . shall continue to be" six per cent.; not upon judgments *on contracts* alone, but upon *all* judgments, as well as upon *decrees*, then for the first time specially designated in a statute as bearing interest. No sound reason can be assigned why the legislature should recognize the propriety of allowing interest

upon a judgment arising out of a contract which would not equally apply to a judgment upon a tort. Indeed, the reason originally assigned at the common law for denying interest is confined, in terms, to the case of a sum certain, payable at a given day. As formulated in the early authorities it amounted to this: that the action of debt was the only mode of recovering a sum certain, except where there was a breach of covenant, and in that action as the defendant was commanded to render the debt, the payment of the specific sum, without anything more, answered the action and put an end to the suit; and thus the interest, forming no part of the original debt, was created only by the nature of the security. And it was argued that this general rule would prevent acts of kindness from being converted into mercenary bargains; and, as it would thus be the interest of traders to press for payment, it would tend to check the pernicious extension of credit, so often injurious to both parties. *Anderson v. Dwyer*, 1 Sch. & Lefr., 303.

But none of these considerations apply to an action of tort. The jury is not called upon to determine that a specific sum was due at a designated day, and to add interest, as such, from the day named. They are simply to award compensatory or perhaps punitive damages in a just amount, which they return as their verdict, and the question is simply whether a defendant in such a case, who may have maimed a plaintiff so that he was in danger of death, or destroyed his property, or debauched his child, after using his wealth to put off the trial to the latest day, may delay payment of the judgment with impunity, and without payment of a cent of interest, while the plaintiff is following him through motions for a new trial, and filing bills in equity to set aside conveyances executed with the design of wearing out the patience, or perhaps the life, and exhausting the means of the person he has injured.

I can see no reason for any such discrimination in favor of such a class of defendants.

Again, I think the language of section 966 R. S. U. S., if not decisive of this question in itself, is certainly of the greatest force as showing what class of judgments was referred to by Congress when it fixed the rate of interest in the District of Columbia by section 713 R. S. D. C.

That section declares: "Interest shall be allowed on *all* judgments in civil causes recovered in a circuit or district court, and may be levied," &c., "and shall be calculated from the date of the judgment at such rate as is

allowed by law on judgments recovered in the courts of such States."

No one can doubt that a judgment in tort, recovered in the circuit court in Baltimore, would bear interest, under this section. Why should a different rule prevail here, in favor of a defendant who has been found culpable, by the verdict of a jury? If this section applies to the courts of the District, it ends the inquiry. And if it be supposed that our local law should be the guide in the inquiry, then sec. 713 of the local law, when considered in the light of this section, must be held equally conclusive of the question before us.

In *Gibson v. Engine Co.*, (6th Ohio Circuit Reps., 135,) the presiding justice held that where the entry of the judgment was delayed by the acts of the opposite party, interest on the verdict was proper, whether the action sounds in contract or in tort; and that if the action is upon contract the verdict draws interest from the first day of the term, but if *ex delicto*, from the date of the rendition of the judgment.

In the case of the District of Columbia v. B. & P. Railroad Co., 1 Mackey, 380, the present defendant had been sued by the District to obtain the amount of a judgment recovered by one Barnes against the District, for an injury resulting from falling into an excavation in the street, made by the Railroad Co. The District paid Barnes the amount of the judgment, with costs and interest from its rendition, and then brought suit against the company and recovered judgment, which was affirmed by the Supreme Court. The company, there, as in this case, insisted that it was only liable for the principal of the judgment recovered by Barnes, and that the District had paid him the interest in its own wrong and could not recover it from the company. The General Term decided that the company was liable to return to the District the entire amount it had paid to Barnes. And I regard this as a decision that Barnes was justly entitled to interest upon his judgment, for if the interest was not a just charge against the District, the General Term could never have justified its exaction from the company. It surely would not have required the company to pay the fees of Barnes' lawyers if the District had carelessly or wrongfully paid them, with the principal of the judgment. I think we decided this question, effectively, in that case, and for this reason, with the others I have mentioned, I consider it the law of this District that a judgment founded on a tort bears interest from its rendition to its satisfaction.

## United States Supreme Court.

BALTIMORE & POTOMAC R. R. Co.

vs.

FIFTH BAPTIST CHURCH.

*In Error to Supreme Court of the District of Columbia.*

1. An annoyance or discomfort which so disturbs the possessor of property in his enjoyment thereof that its ordinary use or occupation cannot be exercised in physical comfort, is a nuisance, for which damages will be given at law, and an injunction granted in equity, if it is continuous.
2. A corporation is as completely liable to remedies against nuisances as any individual person.
3. A railroad corporation must exercise its grant of power with a due regard for the rights of others; its charter will not justify the creation of a nuisance.

The Fifth Baptist Church, the plaintiff in the court below, is a religious corporation, created under the general incorporation act of Congress in force in the District of Columbia. It owns a building in the city of Washington, situated on D street, between Four-and-a-half and Sixth streets, which was erected and has been used by it as a church for many years. The defendant in the court below, the Baltimore & Potomac Railroad Company, is a corporation created under the laws of Maryland, and is authorized by act of Congress to lay its track within the limits of the city, and construct other works necessary and expedient to the proper completion and maintenance of its road. The plaintiff alleges that the defendant, in 1874, erected an engine-house and machine-shop on a parcel of land immediately adjoining its church edifice, and has since used them in such a way as to disturb, on Sundays and other days, the congregation assembled in the church, and to interfere with religious exercises therein, break up its Sunday schools, and destroy the value of the building as a place of worship. It, therefore, brought the present suit in the Supreme Court of the District for the damages it had sustained. The defendant pleaded the general issue. On the trial it was shown that the engine-house and repair-shop of the railroad company, as they were used, rendered it impossible for the plaintiff to occupy its building with any comfort as a place of public worship; that the hammering in the shop, the rumbling of the engines passing in and out of the engine-house, the blowing off of steam, the ringing of bells, the sounding of whistles and the smoke from the chimneys, with its

cinders, dust and offensive odors, created a constant disturbance of the religious exercises of the church; that the noise was often so great that the voice of the pastor while preaching could not be heard; that the chimneys of the engine-house being lower than the windows of the church, smoke and cinders sometimes entered the latter in such quantities as to cover the seats of the church with soot and soil the garments of the worshippers; that disagreeable odors, added to the noise, smoke and cinders, rendered the place not only uncomfortable but almost unendurable as a place of worship; and that, as a consequence, the congregation decreased in numbers, and the Sunday school was less numerously attended than previously. The jury found a verdict for plaintiff for \$4,500.

ENOCH TOTTEN for plaintiff in error.

R. T. MERRICK, J. J. DARLINGTON and M. F. MORRIS, *contra*.

Mr. Justice FIELD delivered the opinion of the court.

Plainly the engine-house and repair-shop, as they were used by the railroad company, were a nuisance in every sense of the term. They interfered with the enjoyment of property which was acquired by the plaintiff long before they were built, and was held as a place for religious exercises, for prayer and worship; and they disturbed and annoyed the congregation and Sunday school which assembled there on the Sabbath and on different evenings of the week. That is a nuisance which disturbs and annoys one in the possession of his property, rendering its ordinary use or occupation physically uncomfortable to him. For such annoyance and discomfort the courts of law will afford redress by giving damages against the wrong-doer, and when the cause of the annoyance and discomfort are continuous, courts of equity will interfere and restrain the nuisance. *Crump v. Lambert*, L. R., 3 Equity, 409. The right of the plaintiff to recover for the annoyance and discomfort to its members in the use of its property and the liability of the defendant to respond in damages for causing them are not affected by their corporate character. Private corporations are but associations of individuals united for some common purpose, and permitted by the law to use a common name, and to change its members without a dissolution of the association. Whatever interferes with the comfortable use of their property for the purposes of their formation, is as much the subject of complaint as though the members were united for some other than a cor-

porate tie. Here the plaintiff, the Fifth Baptist Church, was incorporated that it might hold and use an edifice erected by it as a place of public worship for its members and those of similar faith meeting with them. Whatever prevents the comfortable use of the property for that purpose by the members of the corporation, or those who, by its permission, unite with them in the church, is a disturbance and annoyance, as much as if access by them to the church was impeded and rendered inconvenient and difficult. The purpose of the organization is thus thwarted. It is sufficient to maintain the action to show that the building of the plaintiff was thus rendered less valuable for the purposes to which it was devoted. The liability of the defendant for an annoyance and discomfort caused is the same also as that of individuals for a similar wrong. The doctrine which formerly was sometimes asserted, that an action will not lie against a corporation for a tort, is exploded. The same rule in that respect now applies to corporations as to individuals. They are equally responsible for injuries done in the course of their business by their servants. This is so well settled as not to require the citation of any authorities in its support.

It is no answer to the action of the plaintiff that the railroad company was authorized by act of Congress to bring its track within the limits of the City of Washington, and to construct such works as were necessary and expedient for the completion and maintenance of its road; and that the engine-house and repair-shop in question were thus necessary and expedient; that they are skillfully constructed; that the chimneys of the engine-house are higher than required by the building regulations of the city, and that as little smoke and noise are caused as the nature of the business in them will permit. In the first place the authority of the company to construct such works as it might deem necessary and expedient for the completion and maintenance of its road did not authorize it to place them wherever it might think proper in the city, without reference to the property and rights of others. As well might it be contended that the act permitted it to place them immediately in front of the President's house, or of the capitol, or in the most densely populated locality. Indeed, the corporation does assert a right to place its works upon property it may acquire anywhere in the city. Whatever the extent of the authority conferred, it was accompanied with this implied qualification, that the works should not be so placed as by their use to unreasonably inter-

fere with and disturb the peaceful and comfortable enjoyment of others in their property. Grants of privileges or powers to corporate bodies, like those in question, confer no license to use them in disregard of the private rights of others; and with immunity for their invasion. The great principle of the common law, which is equally the teaching of Christian morality, so to use one's property as not to injure others, forbids any other application or use of the rights and powers conferred. Undoubtedly a railway over the public highways of the District, including the streets of the city of Washington, may be authorized by Congress, and if when used with reasonable care it produces only that incidental inconvenience which unavoidably follows the additional occupation of the streets by its cars, with the noises and disturbances necessarily attending their use, no one can complain that he is incommoded. Whatever consequential annoyance may necessarily follow from the running of cars on the road with reasonable care is *damnum absque injuria*. The private inconvenience in such case must be suffered for the public accommodation. But the case at bar is not of that nature. It is a case of the use by a railroad company of its property in such an unreasonable way as to disturb and annoy the plaintiff in the occupation of its church to an extent rendering it uncomfortable as a place of worship. It admits, indeed, of grave doubt whether Congress could authorize the company to occupy and use any premises within the city limits in a way which would subject others to physical discomfort and annoyance in the quiet use and enjoyment of their property, and at the same time exempt the company from the liability to suit for damages or compensation, to which individuals acting without such authority would be subject under like circumstances. Without expressing any opinion on this point, it is sufficient to observe that such authority would not justify an invasion of others' property to an extent which would amount to an entire deprivation of its use and enjoyment, without compensation to the owner. Nor could such authority be invoked to justify acts creating physical discomfort and annoyance to others in the use and enjoyment of their property, to a less extent than entire deprivation, if different places from those occupied could be used by the corporation for its purposes without causing such discomfort and annoyance.

The acts that a legislature may authorize, which, without such authorization, would constitute nuisances, are those which effect public highways or public streams, or matters in

which the public have an interest, and over which the public have control. The legislative authorization exempts only from liability to suits, civil or criminal, at the instance of the State; it does not affect any claim of a private citizen for damages for any special inconvenience and discomfort not experienced by the public at large. Thus, in *Sinnickson v. Johnson*, 2 Harr., 151, it was held by the Supreme Court of New Jersey, that an act of the legislature authorizing an individual to erect a dam across a navigable water constituted no defense to an action for damages for an overflow caused by the dam. "It may be lawful," said the court, "for him (the grantee of the power) and his assignees to execute this act so far as the public interests, the rights of navigation, fishing, etc., are concerned, and he may plead, and successfully plead, the act to any indictment for a nuisance, or against any complaint for an infringement of the public right, but cannot plead it as a justification for a private injury which may result from the execution of the statute." In *Crittenden v. Wilson*, 5 Cowper, 165, it was held by the Supreme Court of New York, that an act authorizing one to build a dam, on his own land, upon a creek or river which was a public highway, merely protected him from indictment for a nuisance. If, said the court, there had been no express provision in the act for the payment of damages, the defendant would still have been liable to pay them, and the effect of the grant was merely to authorize the defendant to erect a dam, as he might have done, if the stream had been his own, without a grant. In such a case he would have been responsible in damages for all the injury occasioned by it to others. In *Brown v. Cayuga & Susquehanna Railroad Company*, 12 New York, 491, the company was sued for overflowing plaintiff's land by means of a cut through the banks of a stream, which its road crossed. It pleaded authority by its charter to cross highways and streams, and that the cut in question was necessary to the construction and maintenance of the road. But it was held that the company was liable for damages caused. "It would be a great stretch," said the court, "upon the language, and an unwarrantable imputation upon the wisdom and justice of the legislature, to hold that it imports an authority to cross the streams in such a manner as to be the cause of injury to others' adjoining property." And so the court adjudged that the company was under the same obligation as the private owner of the land and stream had he bridged it; and that the right granted to bridge the stream gave no immunity for damages which

the excavation of its banks for that purpose might cause to others. In *Commonwealth v. Kidder*, in the Supreme Court of Massachusetts, 107 Mass., 188, a statute of that State authorized the storage, keeping, manufacture and refining of crude petroleum or any of its products in detached and properly ventilated buildings specially adapted to that purpose; and it was held that it did not justify the refining of petroleum at any place, where a necessary consequence of the manufacture was the emission of vapors which constitute a nuisance at common law by their unwholesome and offensive nature. Numerous other decisions from the courts of the several States might be cited in support of the position that the grant of powers and privileges to do certain thing does not carry with it any immunity for private injuries which may result directly from the exercise of those powers and privileges.

If, as asserted by the defendant, the noise, smoke and odors, which are the cause of the discomfort and annoyance to the plaintiff, are no more than must necessarily arise from the nature of the business carried on with an engine-house and workshop as ordinarily constructed, then the engine-house and workshop should be so remodelled and changed in their structure as to prevent, if that be possible, the nuisance complained of; and if that be not possible, they should be removed to some other place where, by their use, the plaintiff would not be thus annoyed and disturbed in the enjoyment of its property. There are many places in the city sufficiently distant from the church to avoid all cause of complaint, and yet sufficiently near the station of the company to answer its purposes. There are many lawful and necessary occupations which, by the odors they engender, or the noise they create, are nuisances when carried on in the heart of a city, such as the slaughtering of cattle, the training of tallow, the burning of lime and the like. Their presence near one's dwelling-house would often render it unfit for habitation. It is a wise police regulation, essential to the health and comfort of the inhabitants of a city, that they should be carried on outside of its limits. Slaughter-houses, lime-kilns, and tallow furnaces are, therefore, generally removed from the occupied parts of a city, or located beyond its limits. No permission given to conduct such an occupation within the limits of a city would exempt the parties from liability for damages occasioned to others, however carefully they might conduct their business. *Fish v. Dodge*, 4 Den., 512. The fact that the smokestacks of the engine-house were as high as the city

regulations for chimneys required, is no answer to the action, if the stacks were too low to keep the smoke out of the plaintiff's church. In requiring that chimneys should have a certain height, the regulations did not prohibit their being made higher, nor could they release from liability if not made high enough. It is an actionable nuisance to build one's chimneys so low as to cause the smoke to enter his neighbor's house. If any adjudication is wanted for a rule so obvious, it will be found in the cases of *Sampson v. Smith*, 8 Sim., 272, and *Whitney v. Bartholomew*, 21 Conn., 213. The instruction of the court as to the estimate of damage was correct. Mere depreciation of the property was not the only element for consideration. That might, indeed, be entirely disregarded. The plaintiff was entitled to recover because of the inconvenience and discomfort caused to the congregation assembled, thus necessarily tending to destroy the use of the building for the purposes for which it was erected and dedicated. The property might not be depreciated in its salable or market value if the building had been entirely closed for those purposes by the noise, smoke and odors of the defendant's shops. It might then, perhaps, have brought in the market as great a price to be used for some other purpose. But, as the court below very properly said to the jury, the congregation had the same right to the comfortable enjoyment of its house for church purposes that a private gentleman has to the comfortable enjoyment of his own house, and it is the discomfort and annoyance in its use for those purposes which is the primary consideration in allowing damages. As with a blow in the face, there may be no arithmetical rule for the estimate of damages. There is, however, an injury, to the extent of which the jury may measure.

Judgment affirmed.

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No. 212.—OCTOBER TERM, 1881.

THE KNICKERBOCKER LIFE INSURANCE COMPANY, of the City of New York, Plaintiff  
in Error.

vs.

BARTHOLOMEW FOLEY.

*In Error to the Circuit Court of the United States for the District of South Carolina.*

STATEMENT.

In January, 1872, the plaintiff in the court below obtained from the Knickerbocker Life Insurance Company, of the city of New York, a policy of insurance for \$5,000, on the life



of one Badenhop, his debtor to that amount. The premium required at the time and the annual premiums stipulated were paid. The profits arising upon them entitled the assured, in May, 1873, to a further insurance on the life of his debtor, to the amount of \$36.03; and in June, 1874, to the amount of \$39.36; and policies for these sums were issued to him.

Badenhop died in January, 1875; but the assured, being ignorant of the fact paid the next annual premium. The present action is brought to recover the amount of the policies and of the premium overpaid, with interest. It was commenced in a court of the State, and upon application of the company, was removed to the circuit court of the United States. The complaint alleges the issue of the policies, the interest in them of the plaintiff, the death of the debtor whose life was insured, the notice and proof thereof furnished to the company, the fulfillment by the plaintiff and the deceased of "all the conditions" of the policies, the amount due, and its non-payment. It also alleges the payment of the annual premium after the death of the insured. A copy of the policies is annexed to the complaint. The first policy declares that it issued upon the express condition that the application on file in the office of the company is an express warranty of the truth of the answers and statements contained in it, and that, if they are in any respect untrue, the policy is to be void and of no effect to any one. The additional policies declare that they are subject to the same conditions as the first one.

In its answer the company admits the issue of the policies and the payment of the premiums mentioned; but sets up, among other things, as a defence, that the plaintiff and the insured did not make true and correct answers and statements to certain questions contained in the application for the first policy, in this: that to the question, "Is the party of temperate habits? Has he always been so?"; the answer given was, "Yes,"—when, in fact, the insured was a man of intemperate habits, thus concealing by the answer his true habits, and making a false statement concerning them; whereby the policy became void.

On the point thus raised, whether the answers given as to the habits of the insured were true or false, the testimony offered was conflicting. On the part of the company, one witness testified that in 1871, and in the early part of 1872, he was the family physician of Badenhop; that at that time Badenhop was drinking hard; that during that year he had attended him for *delirium tremens*, and once

or twice for indisposition, produced, "as he thought," from the excessive use of intoxicating drink; and that he "regarded" him as a man of intemperate habits. But, on his cross-examination, he admitted that he did not know Badenhop intimately, had no relations with him other than professional, and saw him only when he attended him professionally, or met him occasionally in the street. Two other witnesses testified for the company—one, that he was intimate with Badenhop; the other, that he had known him for several years—and that he was a very intemperate man; that they had frequently seen him under the influence of liquor; but neither of them stated when his acquaintance commenced, whether before or after the policy was issued.

On the part of the plaintiff several witnesses were called, who had known Badenhop intimately for many years, their acquaintance with him commencing before the policy was issued, and continuing afterwards, and one of whom had been his partner in 1869 and 1870; and they all testified unqualifiedly to his being a man of temperate habits.

The defendant requested the court, among other things, to instruct the jury, "That where, in a question whether the party assured is one of temperate habits at the time when he seeks to be insured, and has always been so, witnesses testify, from their own knowledge of the party and his habits, that he was not of temperate habits, their testimony is entitled to greater consideration by a jury than witnesses who testify otherwise, because they have not seen or known of such habits as are testified to by those who declare that he was not a person of temperate habits."

This instruction the court refused to give, and an exception was taken. The court, among other things, instructed the jury that all the representations in the application for the policy of insurance are warranties that such representations are true, and that if they find from the evidence that the habits of the insured, at the time of, or at any time prior to the application, were not temperate, then the answers made by him to the questions, "Are you a man of temperate habits?" "Have you always been so?" were untrue, and the policy is void; but that if they find that his habits in the usual, ordinary, and every-day routine of his life were temperate, then such representations were not untrue within the meaning of the policy, although they may find that he had an attack of *delirium tremens* resulting from an exceptional indulgence in drink prior to the issue of the policy;

and that the burden of proof is upon the defendant to show the breach of any warranty in the policy. To the charge the defendant excepted. The jury found for the plaintiff, and, upon its verdict, judgment was entered; to review which the case is brought to this court on a writ of error.

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The instruction requested by the defendant, treating it as applicable to the case at bar, and not as containing a mere abstract proposition of law, is open to several objections.

In the first place, it assumes that there was a difference in the sources of knowledge of the witnesses in the case; which was not the fact. All of them testified from their observation of the conduct of the deceased; and the jury would probably give weight to the testimony, not according to the positiveness of the averments of the witnesses as to their knowledge; but, other considerations being equal, according to their opportunities of observation of the deceased's conduct, and the manner in which those opportunities had been improved. No witness testified, from his own knowledge, that the deceased was of intemperate habits at the time he applied for the insurance, and that he had always been so. No instruction should be given which thus assumes, as a matter of fact, that which is not conceded or established by uncontradicted proof. (*New Jersey Life Ins. Co. v. Baker*, 94 U. S., 610.)

In the second place, the instruction requested does not present the law with entire accuracy. Whether the testimony of the persons alleging knowledge is entitled to greater consideration than that of persons asserting opinions, mainly depends upon the subjects with respect to which the testimony is given. If the subject be, as in this case, the habits of a party, affirmations of knowledge will be weighed with reference to the opportunities of the witnesses to obtain the knowledge they assert. If they are not intimate with him, and see him only occasionally, the assertion of knowledge of his habits, however strong, will amount to no more than the assertion of an opinion, and will not be entitled to equal weight with less positive testimony of other witnesses founded upon a more extended acquaintance.

In the third place, the instruction requested omits the consideration of the character of the witnesses, as an element in determining the weight to be given to their testimony. The force of testimony often depends as much upon the intelligence and judgment of the witnesses, disclosed by their manner of testi-

fying, as upon confidence in their general veracity.

The charge given by the court, as stated above, correctly presented the law of the case. The question was as to the habits of the insured. His occasional use of intoxicating liquors did not render him a man of intemperate habits, nor would an exceptional case of excess justify the application of this character to him. An attack of *delirium tremens* may sometimes follow a single excessive indulgence. Doctor Ray, in his treatise on Medical Jurisprudence, says, that, though it most commonly occurs in habitual drinkers, after a few days of total abstinence from spirituous liquors, it may be the immediate effect of an excess or series of excesses in those who are not habitually intemperate as well as in those who are. (Sec. 545.) In the American Encyclopædia, under the head of "Delirium Tremens," it is stated, that it "sometimes makes its appearance in consequence of a single debauch;" though commonly it is the result of protracted or long continued intemperance. (Vol. V., p. 782.)

When we speak of the habits of a person, we refer to his customary conduct, to pursue which he has acquired a tendency, from frequent repetition of the same acts. It would be incorrect to say that a man has a habit of anything from a single act. A habit of early rising, for example, could not be affirmed of one because he was once seen on the streets in the morning before the sun had risen; nor could intemperate habits be imputed to him because his appearance and actions on that occasion might indicate a night of excessive indulgence. The court did not, therefore, err in instructing the jury that if the habits of the insured, "in the usual, ordinary, and everyday routine of his life, were temperate," the representations made are not untrue, within the meaning of the policy, although he may have had an attack of *delirium tremens* from an exceptional over-indulgence. It could not have been contemplated from the language used in the policy that it should become void for an occasional excess by the insured, but only when such excess had by frequent repetitions become a habit. And the testimony of the witnesses, who had been intimate with him for years, and knew his general habits, may well have satisfied the jury that, whatever excesses he may at times have committed, he was not habitually intemperate.

Judgment affirmed.

THE latest cigar is named "The Mother-in-law." You set it on fire with a match, the same old way.

## The Courts.

### EQUITY COURT.—Justice James.

SEPT. 24, 1883.

Birney v. Robbins. Testimony ordered taken in thirty days.

Barber v. Gilmore. Pro confesso against G. P. Goff set aside with leave to plead.

Reed v. Reed. Sale ratified nisi.

Cissell v. Kaiser. Sale ordered and E. B. Hay appointed trustee to sell.

Chapman v. Chapman. Bill dismissed.

Sugenheimer v. Brown. Order appointing Leon Tobriner guardian ad litem.

Vincent v. Vincent. On hearing.

SEPT. 25, 1883.

Hilton v. Devlin et al. Pro confesso against certain defendants granted.

Miller v. Werle. Sale ratified nisi and cause referred to the auditor.

Ferguson v. Henderson. Appearance of absent defendant ordered.

Rodgers v. Rodgers. Answer of absent defendant ordered to taken.

In re S. N. Smallwood, alleged lunacy. Commission de lunatico ordered to issue.

Bryns v. Berry. Acceptance of loan by trustee ratified.

Sugenheimer v. Brown. Order appointing E. B. Hay trustee to convey.

Vincent v. Vincent. On argument.

SEPT. 26, 1883.

Schlorb v. Schlorb. Sale ratified and cause referred to the auditor.

Franklin v. Young et al. Pro confesso against Virginia Young ordered.

Vincent v. Vincent. Argument in process.

SEPT. 27, 1883.

Butler v. Scott. Testimony ordered taken before examiner E. D. F. Brady.

Jordan v. Jordan. Testimony ordered taken before examiner A. A. Brooke.

Moore v. Browers. Appearance of absent defendant ordered.

Smith v. Burch. Sale ordered and Job Barnard appointed trustee to sell.

Follin v. Goldin. Sale confirmed and cause referred to the auditor.

Murdock v. Fletcher. Receiver authorized to employ counsel.

Long v. Long. Sale ordered and H. W. Garnett and W. H. Dennis appointed trustee to sell.

Vincent v. Vincent. Hearing concluded and cause submitted.

SEPT. 28, 1883.

Casey v. White. Restraining ordered issued, returnable October 5.

Sonnenschmidt v. Fugitt. Sale ordered, and William A. Meloy and William John Miller appointed trustees to sell.

Coombs v. Coombs. Testimony ordered taken before examiner L. C. Williamson.

King v. Sweet. Pro confesso against E. J. Sweet granted.

### CIRCUIT COURT.—New Suits at Law.

SEPT. 24, 1883.

24771. George W. Utermehle v. L. Reichold et al. Certiorari. Defts atty, L. Tobriner.

SEPT. 25, 1883.

24772. Sarah O. Richards v. The Baltimore & Potomac R.

R. Co. Damages, \$3,000. Pliffs attys, Hine and Hagner & Maddox.

24773. Moses C. Green v. Samuel C. Normont. Ejectment, &c. Pliffs attys, Williamson and Carrington.

24774. Same v. James T. Ross. Ejectment. Pliffs attys, same.

24775. Same v. Louisa Ambler. Ejectment. Pliffs attys, same.

SEPT. 26, 1883.

24776. The United States of America v. Edward Devlin et al. Bond, \$1,000. Pliffs atty, George B. Corkhill.

SEPT. 27, 1883.

24777. Isaac S. Lyon v. District of Columbia. Damages, \$10,000. Pliffs atty, W. F. Mattingly.

SEPT. 27, 1883.

24778. John Webster v. The Baltimore & Potomac R. Co. Damages, \$20,000. Pliffs attys, Cook & Cole.

24779. Elizabeth S. Smith et al. v. Charles H. Earl. Account rent, \$395. Pliffs attys, Appleby & Edmonston. Defts atty, D. E. Cahill.

SEPT. 29, 1883.

24780. Lyman H. Lamb v. The Baltimore & Potomac R. Co. Damages, \$5,000. Pliffs attys, Cook & Cole.

24781. M. W. Galt, Bro. & Co. v. Charles H. Reed. Certiorari. Defts atty, Chapin Brown.

24782. Horace S. Johnson v. The Baltimore & Potomac R. Co. Damages, \$3,000. Pliffs atty, John E. Norris.

24783. Joseph R. Edson v. William E. Burford. Appeal. Pliffs attys, Edwards & Barnard.

### IN EQUITY.—New Suits.

SEPT. 22, 1883.

8715. Anthony Hyde et al. v. Edward Fitzgerald. Interpleader. Com. sols., Carusi & Miller.

SEPT. 25, 1883.

8716. Bridget McNamara v. Mary F. Boswell et al. Substitution of trustee. Com. sol., B. F. Leighton.

SEPT. 26, 1883.

8717. David Ferguson v. Gustavus A. Henderson. To carry into effect contract of sale. Com. sols., Gordon & Gordon.

8718. Wm. S. N. Smallwood, alleged lunatic, upon petition of Annie J. Bassett, de lunatico inquirendo. Com. sols., Hanna & Johnston.

8719. Simon Wolf v. George Courtney et al. Creditors' bill. Com. sol., W. F. Mattingly. Defts sols, Hine & Thomas.

SEPT. 27, 1883.

8720. Mary A. Sunderland v. John B. Alley et al. Account, &c. Com. sols., Merrick & Morris.

SEPT. 28, 1883.

8721. Mary Casey et al. v. Robert R. White, administrator. For account and receiver. Com. sol., N. H. Miller. Defts sols., Carusi & Miller.

8722. Charles A. Kobb v. William M. Kolb. To confirm contract of sale. Com. sols., Edwards & Barnard.

8723. United States v. John Shea et al. Judgment creditors' bill. Com. sol., Geo. B. Corkhill.

### PROBATE COURT.—Justice James.

SEPT. 28, 1883.

Estate of David P. Holloway; order appointing Reuben F. Baker administrator on bond of \$500.

In re Lincoln Brown; order appointing Blanche P. Brown guardian on bond of \$500.

Estate of John G. Killian; order directing that goods mentioned in widow's petition be delivered to her daughter and stricken from the inventory.

In re Jennie T. Rives, guardian; order giving guardian authority to invest \$6,000 of her ward's funds.

Estate of Joshua Riley; four codicils proved by Mary Ann Riley and William A. Deeble, and codicils admitted to probate and record.

Estate of Frank Hagerty; exception to account of administrator filed.

Estate of James H. Peake; order of publication issued.

Estate of Alexander Eagleston; order requiring Mary E. Eagleston to give bond and take out letters of administration.

Estate of William E. Schoenborn; order granting letters of administration to Mary A. Schoenborn on bond of \$3,000.

Estate of Samuel Kirby; petition of W. W. Kirby to rescind so much of letters testamentary issued to Arthur B. Claxton as relates to personal estate of deceased not mentioned in the will and that letters of administration be issued to the petitioner.

Estate of Samuel Magee; will admitted to probate and letters testamentary issued to Laura Magee on bond of \$1,000.

Estate of Squire Williams, of Bennings Station, D. C.; petition of Willie Williams' widow for letters of administration filed.

Estate of John W. Hagan; order authorizing administrator to receive \$250 in settlement of the claim against James H. Platt.

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

JOHN R. REED ET AL.

Equity. No. 7962.

GEORGE W. REED ET AL.

George P. Goff, trustee in this cause, having reported the sale of the south 42 feet front, by the depth thereof of original lot 10, square 576, in the city of Washington, District of Columbia, to Mary Fuller, for the sum of \$2,100:

It is, this 24th day of September, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 26th day of October, next. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

CATHARINE MILLER ET AL.

Equity. No. 8,574.

MARGARET WERLE ET AL.

The trustee in this cause having reported the sale of the real estate mentioned in these proceedings, viz: the western 17 feet and 9 inches front, by the depth of lot 10, in square 450, to Miss Frances Straub and Matthias Straub, for the sum of \$1,650.40; the 17 feet and 8 inches front by the depth of lot 10, in square 450, east of the western 17 feet and 9 inches to Charles P. Miller, for the sum of \$1,027.14; and the eastern 17 feet and 8 inches front by the depth of said lot 10, in said square 450, to Francis Miller, for the sum of \$947.94; and that the terms of sale have been complied with:

It is, this 26th day of September, A. D. 1883, ordered, that said sales be ratified unless cause to the contrary be shown on or before the twenty-seventh day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three weeks before the said 27th day of October next.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: R. J. MEIGS, Clerk.  
CHAS. A. WALTER, Sol'r. 39-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Kirby, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.

ARTHUR B. CLAXTON, Executor.

APPLEBY &amp; EDMONSTON, Proctors. 39-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of Philadelphia, Penna., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Curtis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of September, 1883.

LEVI CURTIS, Executor,

468 n. 6th st., Philadelphia, Pa.

Or to G. W. BALLOCH,

1006 F. st., city.

R. ROSS PERRY, Solicitor. 39-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the case of Allan Rutherford, Administrator of John S. S. Maret, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 19th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of September, 1883.

DAVID FERGUSON

No. 8717. Eq. Doc. 23.

GUSTAVUS A. HENDERSON ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Gustavus A. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. OHAS. P. JAMES, Justice.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah A. Keating, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of July, 1883.

JOHN F. ENNIS, Administrator.

## IN RE ESTATE OF SAMUEL KIRBY, DECEASED.

Upon the hearing of the petition of W. W. Kirby, this day filed, it is this 25th day of September, A. D. 1883, ordered, that the prayers of said petition be granted unless cause to the contrary be shown on or before the 29th day of October next. Provided, a copy of this order be duly served upon Arthur B. Claxton, personally and be published in the Washington Law Reporter once a week for three weeks.

By the Court. CHAS. P. JAMES, Justice.  
A true Copy. Test: H. J. RAMSDELL,  
39-3 Register of Wills, D. C.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William E. Schoenborn, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

MARY A. SCHOENBORN.

CHAS. A. WALTER, Solicitor. 39-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the matter of the Will of James T. Peake, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased has this day been made by John H. Peake and William C. Peake.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
WM. B. LORD, Solicitor. 39-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. September 14, 1883.

In the matter of the Estate of Elmore W. Tuttle, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John B. Dunning.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of October, 1883, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
JOHN J. WARD, Solicitor. 37-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 17th day of September, 1883.

ALICE C. CRAWFORD

No. 8707. Eq. Dec. 23.

WILLIAM CRAWFORD.

On motion of the plaintiff, by Mr. John A. Clarke, her solicitor, it is ordered that the defendant, William Crawford, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. 38-3

Test: R. J. MEIGS, Clerk.

**CHANCERY SALE OF VALUABLE UNIMPROVED**  
**REAL ESTATE NEAR THE CAPITOL, BEING ALL**  
**OF SQUARE FIVE HUNDRED AND SEVENTY-**  
**EIGHT.**

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Special Term in Equity, in cause number 8424, Equity Docket 22, wherein Henry K. Willard is complainant, and Andrew Wylie and others are defendants, which decree was passed September 5th, A. D. 1883.

We will, on Tuesday, October 9th, A. D. 1883, commencing at the hour of 3 P. M., in front of the premises, offer at public sale, square five hundred and seventy-eight (578), in the city of Washington. This square will be sold in lots according to the subdivision filed in said cause, and which will be exhibited at the time of sale.

Terms of sale as prescribed by said decree are one-third of the purchase money in cash and the balance in six and twelve months from day of sale; for the deferred payments the purchaser or purchasers shall give their notes, drawing six per cent. interest per annum, secured by deed or deeds of trust on the property purchased.

All conveying at the cost of the purchaser or purchasers.

A deposit of fifty dollars [\$50] on each lot must be made when the property is knocked down.

JOHN C. HEALD,

501 F street N. W.

HENRY WISE GARNETT,

No. 2 Columbia Law Building.

Trustees.

DUNCANSON BROS., Auctioneers.

38-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

EDWARD TEMPLE ET AL.

Equity. No. 7767.

CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot twenty-eight (28), in square one thousand (1000), to Richard T. Pettit for \$25; lots three (3), five (5) and thirteen (13), in square six hundred and eight (608), for \$168.75; lot seven (7), in square six hundred and ten (610), for \$30; and lot ten (10), in square six hundred and ten (610), for \$40; to B. H. Warner: lot sixteen (16), in square six hundred and ten (610), for \$75; and the south one-half (½) of lot seventeen (17) in the same square, for \$27.50 to N. W. Burchell; lot eight (8), in square six hundred and eleven (611), for \$42.50 to William B. Webb; lot eight (8), in square six hundred and thirteen (613), for \$50; lot seventeen (17), in square six hundred and seventeen (617), for \$261; lot 3 (3), in square east of square six hundred and sixty-four (664), for \$40; lot four (4), in square south of square six hundred and sixty-seven (667), for \$50; lots nine (9) and ten (10), in square east of south of square six hundred and sixty-seven (667), for \$34 each lot; lots twenty-two (22), twenty-three (23), twenty-six (26) and twenty-seven (27), in square south of square six hundred and forty-three (643), for \$200; lots three (3) and twenty-two (22), in square six hundred and forty-two (642), for \$324; lot eight (8), in square east of square six hundred and forty-two (642), for \$250; lot eight (8), in square seven hundred and eight (708), for \$50; lot 3 (3), in square eighty-eight (88), for \$61; and lot nineteen (19), in same square, for \$100; lot one (1), in square six hundred and nine (609), for \$75; lot five (5), in square six hundred and three (603), for \$65; and lot five (5), in square six hundred and sixty-two (662), for \$75, all to Augustus Burgdorf; and lot fifteen (15), in square eight hundred and seventy-eight (878), subject to all taxes, to B. H. Warner for \$100. And it appearing to the court that the order passed in this cause on the 30th day of July, A. D. 1883, conditionally ratifying these sales, has not been published as therein required, it is, by the court, this 17th day of September, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of October, 1883: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 17th day of October, A. D. 1883.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 38-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

IN BANKRUPTCY.

In the Matter of THOMAS B. ENTWISLE and GEORGE O. BARRON, individually and as co-partners under the firm name of ENTWISLE & BARRON.

Case No. 341.

Upon consideration of the report of James S. Edwards, assignee of Thomas B. Entwisle and George O. Barron, and of the firm of Entwisle & Barron, bankrupts, filed herein on or before the 15th day of September, 1883, submitting a proposition, or offer, on the part of the said Thomas B. Entwisle and Mary M., his wife, to compromise the suit brought against them by said assignee in this court, being Equity Cause No. 6452, upon the terms in said report mentioned:

It is this 15th day of September, A. D. 1883, ordered, adjudged and decreed, that the said compromise settlement be confirmed, on the terms stated in said report, on the 17th day of October next, unless cause to the contrary be shown on or before that date: Provided a copy of this order be published once a week for three successive weeks in the two newspapers known as the "Evening Star" and the "Washington Law Reporter," printed and published in the city of Washington, in the District aforesaid, before said last mentioned date.

By the Court. D. K. CARTTER, Chief Justice.

A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 17th day of September, 1883.

JOHN A. PRESCOTT AND JAMES FRASER,  
Trustees,

No. 8708. Eq.  
Dec. 23.

SEYMOUR RAY AND MELINDA J. RAY,  
his wife, VINCENT RAY, SYLVESTER H.  
RAY, AUGUSTUS F. RAY, LEWIS RAY  
and FRANK R. RAY.

On motion of the plaintiffs, by Mr. Thos. H. Callan, their solicitor, it is ordered that the defendants, Seymour Ray and Melinda J. Ray, his wife, Vincent Ray, Sylvester W. Ray, Augustus F. Ray, Lewis Ray and Frank R. Ray, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of September, 1883.

THE NATIONAL UNION INSURANCE CO.

No. 8664. Eq. Dec. 23

JOHN B. TYLER AND OTHERS.

On motion of the plaintiff, by Mr. A. S. Worthington, its solicitor, it is ordered that the defendants, Albert O. S. Reiley, Thomas B. Bryan, Margaret Heisel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

True copy. Test: 38-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jonathan Taylor, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of August, 1883.

JOSEPHINE E. TAYLOR,

WASHINGTON DANENHOWER.

FRANK T. BROWNING, Solicitor.

38-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ida K. Davie, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883.

37-3 ROBERT G. DYRENFORTH, Executor.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Ragan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883,  
**RICHARD F. HARVEY**, 921 7th street, n. w.  
 Wm. H. DENNIS, Solicitor. 38-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Weaver, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.  
 AUGUSTA M. WEAVER, Executrix. 38-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. September 21, 1883.**

In the case of Wm. W. Birth and Brenton L. Baldwin, Executors of Caroline E. Birth, deceased, the Executors aforesaid have, with the approval of the court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares [or legacies] or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
 A. B. DUVAL, Solicitor. 38-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 21, 1883.**

In the matter of the Estate of Robert Swift, late of the Island of St. Thomas, in the Danish West Indies deceased. Application for Letters of Administration on the estate of the said deceased has this day been made by John St. C. Brookes.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published twice in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: 38-2 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.**

ISABELLA DODSON

JAMES H. DODSON.

On motion of the plaintiff, by Mr. W. Preston Williamson, her solicitor, it is ordered that the defendant, James H. Dodson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1883.**

MARY EUNICE CLARKE

ANNA O'HARA ET AL.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Susan O'Hara, Virginia O'Hara, George E. O'Hara and Julia Eddy nee O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. 38-3 Test: R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 7, 1883.**

In the matter of the Will of Josiah Curtis, M. D., late of the District of Columbia, who died at London, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Levi Curtis, of Philadelphia, Penn.

All persons interested are hereby notified to appear in this court on Friday, the 28th day of September next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
 Test: 36-3\* H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

KATIE F. SAGE ET AL.

MARY E. SAGE ET AL.

John F. McNally and Edwin B. Hay, trustees, having reported that they have sold sub-lot 14, in Hoffmann's recorded sub-division of original lot 2, in square 677, with the improvements thereon, in the city of Washington, District of Columbia, to Hugh Donohoo, for the sum of \$1,779:

It is, this 4th day of September, A. D. 1883, ordered, that the said sale will be finally ratified and confirmed on the 6th day of October, A. D. 1883, unless cause to the contrary be shown on or before said day.

Provided, a copy of this order be published once a week for three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.  
 A true copy. Test: 36.3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

EDA ANN DALLAS

OLIVER C. DALLAS ET AL.

The trustee in this cause having reported to the court that he has sold the real estate mentioned and described in these proceedings to Mary A. Murphy, and that the terms of sale have been complied with: It is, this 4th day of September, A. D. 1883, ordered, that the sale be ratified unless cause to the contrary thereof be shown on or before the 6th day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington once a week for three weeks before said 6th day of October next.

By the Court. CHAS. P. JAMES, Justice, &c.  
 True copy. Test: 36.3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

MARY T. DAYTON ET AL.

CORNELIA H. DAYTON ET AL.

On consideration of the report of James M. Johnston, trustee, filed in this cause on this day: It is, by the court this 4th day of September, 1883, ordered, that the sale reported by him be ratified and confirmed unless cause to the contrary be shown on or before October 1, 1883. Provided, the usual notice be printed in the Washington Law Reporter for two weeks. It is, further ordered, that said trustee sell the notes to be given by L. P. Shoemaker and A. F. Fox, for the face value thereof and as proposed in said trustees' report.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 36-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 4th day of September, 1883.**

NICHOLAS WEGGEMANN

FRANCIS H. WEGGEMANN ET AL.

Ordered, that the sales made and this day reported by John F. Hanna and Reginald Fendall, trustees for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 5th day of October, next. Provided, a copy of this order be inserted in some newspaper printed and published in said district once in each of three successive weeks before said day.

The report states that the south part of sub-lots 19 and 20, being 31 feet 3 3/4 inches front, sold for \$4,156; and that the north part, being 16 feet 8 1/2 inches front, sold for \$3,000.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 36.3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.** September 14, 1883.

In the matter of the Will of Mary Jaffrey Field, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Richard Crowther.

All persons interested are hereby notified to appear in this court on Friday, the 13th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**  
Test: **37-3 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of September, 1883.**

**EMMA J. HIGH**

No. 8692. Eq. Doc., 23

**HENRY HIGH,**

On motion of the plaintiff, by Mr. A. A. Lipscomb, her solicitor, it is this 11th day of September, ordered that the defendant, Henry High, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: **37-3 R. J. MEIGS, Clerk, &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of September, 1883.**

**JOHN ADAMS**

No. 8701. Eq. Doc. 23.

**REUBEN B. CLARKE, JOHN WELSH AND FELICIA E. WELSH.**

On motion of the plaintiff, by Mr. Robert J. Murray, his solicitor, it is ordered that the defendants, John Welsh and Felicia E. Welsh, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **37-3 R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles L. Vertongen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1883.

**LUCIEN E. C. OLLIERE, Administrator.**  
**HANNA & JOHNSTON, Solicitors.** 37-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John B. Ruth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of September, 1883.

**MARIA RUTH, Executrix.**  
**CHARLES A. WALTER, Solicitor.** 37-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.** September 14, 1883.

In the case of Martin Becker, Executor of Michael Henry Becker, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of October A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**EDWARDS & BARNARD, Solicitors.** 37-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Wilson, alias Mary Sayre, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1883.

**REBECCA HINTON, Administratrix.**

**A. C. RICHARDS, Solicitor.** 37-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business.** September 14, 1883.

In the case of Martin F. Morris, Executor of Maria Southron, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of October, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise, the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

37-3 Test: **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bernhard Berens, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**MAGDALENA BERENS, Ex'r.**

**WARREN O. STONE, Sol'r.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of September, 1883.**

**THOMAS B. CRESLEY**

No. 8640. Eq. Doc. 22.

**LUCY J. CRESLEY.**

On motion of the plaintiff, by Mr. J. A. Smith, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **36-3 R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 4th day of September, A. D. 1883.**

**POWER ET AL.**

Equity Docket No. 22. Cause No. 3023.

**WALSH ET AL.**

Rutledge Willson, trustee, having this day reported that he made sale on the 7th day of July, A. D. 1883, of lot numbered (26) twenty-six of the recorded sub-division of original lots numbered (1) one, (2) two, (3) three, (4) four, (17) seventeen, (18) eighteen and (19) nineteen, in square numbered (511) five hundred and eleven, to Brainard H. Warner, for the sum of \$635 50, or 25 cents per square foot: It is, this 4th day of September, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 6th day of October, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said 6th day of October, 1883.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: **36-3 R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. C. DuHamel, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.

**ELIZABETH H. DUHAMEL,**  
**W. K. DUHAMEL, Solicitor.** 36-3



# Washington Law Reporter

WASHINGTON - - - - - October 6, 1883

GEORGE B. CORKHILL - - - EDITOR

THE CASE of the United States v. McCarthy, in the United States Circuit Court for the Southern District of New York (16 Rep., 388), involved some interesting questions as to the extent to which the privilege of a witness in Federal courts extended, in declining to answer incriminating questions. In the course of an examination of a criminal charge against the defendant, before a United States Commissioner, Henry A. Kearney, who had been sworn as a witness on behalf of the United States, sought to avail himself of the privilege and declined answering certain inquiries made of him, and the matter was certified to the court for its direction. The witness had answered that he had acted as a broker in the purchase of the vessel Mary N. Hogan, which was in custody of the marshal in proceedings for her forfeiture for violation of the neutrality laws, but he refused to state for whom.

The court, in disposing of the question, held, that it is not sufficient to excuse the witness from answering that he may, in his own mind, think his answer to the question might by possibility lead to some criminal charge against him, or tend to convict him of it if made. The court must be able to perceive that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. *Queen v. Boyes*, 1 Best & S. Q. B., 311; *Wharton on Ev.*, § 538. In this case there is no charge pending against the witness, nor is he threatened with any prosecution. He does not specify or indicate any offense of which his answers may tend to incriminate him; and it is therefore mere surmise and possibility of some connection with the fitting out of the Mary N. Hogan, and that alone, which the court could go upon as excusing the witness from answering. Such a mere surmise is plainly insufficient without anything more tangible to support it. In the *Matter of Graham*, 8 Bened., 419, questions as remote as some of those in the present case were held privileged, because it appeared from the previous examination of witnesses that the witness was charged with participating in a gambling transaction which, if true, exposed him to a criminal prosecution according to the laws of the State of New York. As this objection, however, would probably be at once obviated upon a re-ex-

amination of the witness, by some sufficient statement, I may add that under § 860 of the Revised Statutes, I think this privilege can no longer be upheld. That section, in the language of the original act of February 25, 1868, 15 Stats. at Large, 37, provides, "that no answer or other pleading of any party, and no discovery or evidence obtained by means of any judicial proceeding from any party or witness in this or any foreign country, shall be given in evidence, or in any manner used against such party or witness, or his property or estate, in any court of the United States, or in any proceeding by or before any officer of the United States, in respect to any crime, or for the enforcement of any penalty or forfeiture by reason of any act or omission of such party or witness." The act is entitled, "An act for the protection in certain cases of persons making disclosures as parties or testifying as witnesses." The reason of the former rule exempting witnesses from giving compulsory testimony against themselves was, that their testimony might be used to convict them.

The statute above quoted in preventing all possible use of testimony thus given does away with the reason of the rule, and there is, therefore, no longer any ground for its application. The maxim "*Cessat ratio, cessat lex*," would seem to apply in full force. It has been so held in *United States v. Brown*, 1 Sawy., 531; *United States v. Williams*, 15 Int. Rev. Rec., 199; *In re Philips*, 2 Am. L. T., 154. On behalf of the witness it is still claimed that he is still exempted from answering by the Fifth Amendment of the Constitution, which provides that "no person shall be compelled in any criminal case to be a witness against himself." The precise point, as well as the previous question, was considered and overruled in the court of appeals in this State, in the case of *The People v. Kelley*, 24 N. Y., 74. It is unnecessary to add to the exposition of Judge Denio in that case. Section 860 of the U. S. Rev. Stats., will be a complete protection against the use of any testimony which the witness may give against himself in any other transaction or proceeding against him or his property. The witness' claim of privilege must therefore be disallowed, and he be required to answer the questions certified, and any others of a similar character.

WITH THE case of *Hatfield v. Hatfield* reported in this number, the LAW REPORTER commences the publication of such accessible, and heretofore unreported, cases of interest, as were decided by the Supreme Court of the District prior to any of those appearing in 1 Mac Arthur



### The Case of Betty John.

From a scarce and singular volume by W. Hutton, containing decisions of the Court of Requests at Birmingham, we extract the following unique case for the entertainment of our readers:—

A plaintiff wished to sue a person in this court, but, not knowing whether the party was male or female, was at a loss by what name to begin. The defendant had been many years known in the dress and character of a woman called Elizabeth, and had been many years known in the dress and character of a man, who answered to the name of John. The plaintiff, after fruitless inquiries, determined to trap the person, let the sex be what it would, and, therefore, filled up the summons with Elizabeth alias John Haywood.

Whatever was the gender, the animal appeared in court in a female habit, was rather elegant, of a moderate size, tolerably handsome, about thirty-two, had a firm countenance, and manly step, no beard, eyes susceptible of love, a voice tending to the masculine, with manners engaging, and was rather sensible. A husband was pleaded in bar, and that the court had no power over a wife. The trial continued three or four days, during which the defendant acquired the appellation from the people of Betty John. As it attended the court in female dress, I shall take the liberty of treating it with a feminine epithet.

It appeared, from undoubted evidence, that, while she dressed like a man, she was suspected to be a woman; but in both dresses was strongly suspected to be a man. The common opinion of the ignorant was that she was an hermaphrodite, partaking of both sexes. When she carried a male dress, she spent her evenings at the public house with male companions, and could, like them, swear with a tolerable grace, get drunk, smoke tobacco, kiss the girls, and now and then kick a bully. Though she pleaded being a wife, she had really been a husband, for she courted a young woman, married her, and they lived together in wedlock till the young woman died, which was some years after and without issue. She afterwards, like people of higher rank, kept a mistress, and ran away with her.

Forcible evidences like these were sufficient to convince the wisest head upon this bench, or any other, that a man in disguise stood before them. Her wife living peaceably with her all her days without one complaint of a breach of the marriage covenant, evinced there was no defect. Neither would a girl sacrifice her reputation by becoming a mistress to a

woman in breeches. Besides, a woman receives very little more pleasure in saluting a living woman than a dead one; whereas, a man, like the figure before the bench, seemed to receive a pleasure inexpressible. Her being versed in the art of kicking, further proved she was a man, because it is an art never thoroughly understood by the beautiful part of creation, nor has it been practised since the days of Queen Elizabeth. Again, she spoke but little, which was no indication of her being a woman.

The court, not satisfied she was a wife, and no further evidence arising, entered an order against her. On her neglecting payment she was served with an execution, and committed to prison. Two days after, it appeared from incontestible proof that she was a real woman, and a real wife.

### Obstare Decisio.

The following is an extract from Mr. Bumpkin's Lawsuit, or How to Win Your Opponent's Case:—

A farmer's bull had strayed from the road, gone into another man's yard, and upset a tub of meal; it was then driven into a shed and locked up. The owner of the bull demanded that the animal should be released. "Not without paying two pounds," said the meal-owner. The bull-owner paid it, under protest, and summoned the meal-owner to the county court for one pound seventeen shillings and sixpence, the difference between the damage done (which was really about twopence) and the money paid to redeem the bull. Judgment for plaintiff. Motion for new trial, or to enter verdict for the defendant, on the ground that the man could charge what he liked.

One of the learned judges asked:—

"Do you mean to tell me, Mr. Smiles, that if a man has a bull, and that bull goes into a yard and eats some meal out of a meal-tub, and the damage amounts to twopence, and the owner of the bull says, 'Here is your twopence,' that the owner of the meal can say, 'No, I want a hundred pounds, and shall take your bull damage feasant,' and then takes him and locks him up, and the owner of the bull pays the hundred pounds,—he cannot afterwards get his money back?"

"That is so," says the learned counsel, "such is the law." And then he cited cases innumerable to prove that it was the law.

"Well," said the judge, "unless you show me a case of a bull and a meal-tub, I shall

not pay attention to any case,—it must be a meal-tub."

Second judge: "It is extortion, and done for the purpose of extortion; and I should say he could be indicted for obtaining money under false pretences."

"I am not sure he could not, my lord," said the counsel; "but he can't recover the money back."

It was interesting to see how the judges struggled against this ridiculous law; and it was manifest, even to the unlettered Bumpkin, that a good deal of old law in very much like old clothes, the worse for wear, and totally inapplicable to the present day. A struggle against old authorities is often a struggle of judges to free themselves from the fetters of antiquated dicta and decisions no longer appropriate to or necessary for the modern requirements of civilization.

In this case precedents running over one hundred and eight years were quoted, and, so far from impressing the court with respect, they simply evoked a smile of contempt.

The learned judges, after patiently listening to the arguments, decided that extortion and fraud give no title, and thus were the mists and vapors that arose from the accumulated mud-banks of centuries dispelled by the clear shining of common-sense. In spite of arguments by the hour, and the pettifogging of one hundred and eight years, justice prevailed, and the amazed appellant was far more damaged by his legal proceedings than he was by the bull.

The moral surely is, that, however wise the ancient judges were in their day, their wisdom ought not to be allowed to work injustice. He may be a wise judge who makes a precedent, but he is often a much wiser who sweeps it away.

It is stated that a considerable yearly deficit in the accounts of the great Brooklyn bridge is inevitable. The receipts are less than \$1,000 per day, or \$365,000 per year, while interest, expenses and repairs will reach about \$1,000,000 annually. The cable road has at last been opened for public travel.

"I REMEMBER," says Lord Eldon, "Mr. Justice Gould trying a case at York, and when he had proceeded for about two hours he observed: 'Here are only 11 jurymen in the box; where is the twelfth?' 'Please you, my lord,' said one of the 11, 'he is away about some business, but he has left his verdict with me.'"

## Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

MARY A. HATFIELD

vs.

JOHN A. HATFIELD.

EQUITY. No. 137.—SPECIAL TERM.

Decided May 20, 1864.

1. Before the passage of the act of Congress of June 19, 1860, (Stats. at Large, V. 12, p. 59), no court of this District possessed jurisdiction over the subject of divorce.
2. Under the fifth section of said act, a divorce can not be granted by the courts of this District, when the grounds of it occurred while the parties were domiciled in, and subject to some other and foreign jurisdiction, unless the party applying has resided within this District for two years. This court will, therefore, not assume jurisdiction to grant a divorce between parties, neither of whom is or ever was a resident of this District, simply because the adultery complained of was committed here.

THE CASE is stated in the opinion.

M. THOMPSON for petitioner.

Mr. Justice Olin delivered the opinion of the court.

This suit is brought to obtain a divorce from the bonds of matrimony, upon the grounds of adultery. The defendant, though personally served with process, did not appear or defend the suit.

When this cause was first brought to a hearing upon pleadings and proofs, the petition was deemed so defective in several particulars deemed essential, that an order was made dismissing it, unless the same were amended in the several particulars mentioned in the order.

The petition was accordingly amended, in pursuance of the order, so far as the facts of the case would permit, and the cause is again before this court for a final decree.

The petitioner alleges that, at the time of filing her petition she was residing in the city of Baltimore, in the State of Maryland, that the defendant, to the best of her knowledge and belief, has no permanent domicile unless it be in the District of Columbia; that she was married to the defendant in the State of Pennsylvania; and that the adultery complained of was committed in the city of Washington, in this District.

The question therefore arises in this case, whether this court will assume jurisdiction and grant a divorce between parties, neither of whom (so far as the court is informed) is, or ever was, a resident of this District, simply

because the adultery complained of was committed here.

Before the passage of the act of Congress of the 19th of June, 1860 (see Statutes at Large, vol. 12, page 59), no court of this District possessed jurisdiction over the subject of divorce. At common law neither a court of law, or a court of equity, have power to grant a divorce. See Willard's Equity Jur., p. 655.

Though courts of chancery, in this country, have entertained suits to decree the nullity of a marriage in cases where there had been no *legal contract of marriage* between the parties, by virtue of its original and inherent jurisdiction. See *Weightman v. Weightman*, 4 Johns. Ch., 342.

The act of Congress before referred to conferred upon the late Circuit Court of this District the power to grant divorces from the bonds of matrimony, and divorce from bed and board for the causes therein enumerated, and that the late act abolishing the Circuit Court and creating instead thereof the Supreme Court of that District, conferred upon the latter all the powers, authority and jurisdiction possessed by the former.

The first section of the act of Congress, upon the subject of divorce in the District of Columbia, simply confers jurisdiction upon that subject upon the Circuit Court of this District.

The second section prescribes the mode of procedure in suits for divorce.

The third declares the causes for which the marriage contract will be annulled; and those causes are substantially, but two—

First, in cases where either of the parties, when entering into the contract of marriage commits adultery.

The fourth section prescribes the causes for which a divorce from bed and board will be granted; and the fifth section of the act is in the following words:

"No divorce shall be granted for any cause occurring out of this District, unless the party applying for the same shall have resided within the District for two years next preceeding the application"

The foregoing are substantially all the provisions of the act of Congress in reference to the subject of divorce necessary to be referred to as bearing upon the question in this case. I have quoted the fifth section at length, for the reason that its provisions are claimed by the counsel for the petitioner to have an important bearing on the case.

It is argued by counsel that, inasmuch as it is provided that "no divorce shall be granted for any cause which shall have occurred out

of the District, unless the party applying for the same shall have resided within the District for two years," it follows, at least, by implication, that any one may prosecute a suit for divorce in this District, when the cause for such divorce occurred in it.

I do not assent to the logic of that interpretation of the statute. It by no means follows that the legislature of this District intended this court should exercise jurisdiction in all cases of divorce where the act or acts upon which the application for divorce is based, were done or committed in this District (no matter where the residence or domicile of the parties were), simply because it has provided, that unless the act or acts were done in this District, no suit for a divorce should be entertained, unless the party applying shall have resided in the District for two years.

Such a construction of the statute would contravene public policy and be most mischievous in its consequences as it would be an assumption of power to control all the rights of parties growing out of the relation of husband and wife, parent and child, between persons having no domicile or residence within this District, rights upon which the very foundation of society rests, and which no well-governed state can or ought to surrender to the control of any foreign jurisdiction.

Hence it has been held by the highest tribunals of several of the States, where a party had gone from the State of his residence and instituted proceedings for a divorce without having changed his actual domicile, such divorce has been held an absolute nullity by the courts in the State of his actual domicile. See *The Inhabitants v. Turner*, 14 Mass. R., 227. In that case the court remarked: "If we were to give effect to this decree, we should permit another State to govern our citizens in direct contravention of our own statutes, and this can be required by no rule of comity."

So in the case of *Borden v. Fith*, 15 John., 124, it was held, that where the marriage was in Connecticut, and the husband afterwards went to Vermont, and instituted a suit there for a divorce, against his wife, who never resided there, and did not appear in the suit, that the divorce was null and void, being in *fraudem legis* of the State where the parties were married and had their domicile.

Story, in his *Commentaries on the Conflict of Laws*, says (§ 230, p. 192):

"Upon the whole the doctrine now firmly established in America upon the subject of divorce is, that the law of the place of the actual *bona fide* domicile of the parties gives

jurisdiction to the proper courts to decree a divorce for any cause allowed by the local law, without reference to the place of the original marriage or the place where the offence, for which the divorce was allowed was committed. See also, upon this subject, the very able and learned opinion of Chief Justice Gibson, in the case of *Dorsey v. Dorsey*, 1 Law Reporter, 287.

But let us look more carefully at the fifth section of the act before quoted. "No divorce (it says) shall be granted for any cause which shall have occurred out of this District, unless the party applying shall have resided within the District for two years," &c. What is meant by the phrase, the cause occurring in this District? Suppose the case to be an application for divorce from the bonds of matrimony. The adultery is committed in this District. The parties at the time the adultery is committed are domiciled in and residents of the State of Maryland. Does the "cause of the divorce," within the meaning of this statute, occur in this District or in the State of Maryland. I think it may be properly said to occur in the State of Maryland. The causes of the divorce, or the grounds for a divorce are the breach of the marital contract between the parties. It is a personal contract, and the breach of all personal contracts is properly said to occur, if at all, at the place where the parties to it have their residence or domicile. Look for a moment at the consequences attending the construction of the statute contended for by the counsel for the complainant. Husband and wife move into this District, with the intention of making it their permanent residence. They remain here one whole year, and, under our municipal regulations become entitled to all the rights, civil and political, that are possessed by a native of this District. The husband steps over the line of the District into Virginia or Maryland, and commits adultery: must the wife complete a residence of two years in this District before she can apply to this court for relief from a situation which to her has become disgustingly offensive? Or take the case of an application for divorce from bed and board for cruel and inhuman treatment. The parties have only had their residence within this District for ten days, nay, they may be here on an errand of business or pleasure. If the wife is here treated with brutality she may immediately apply to this court for a separation from her husband, but though the parties are *bona fide* residents of this District, and have been here domiciled for any period short of two years, the court is closed against her un-

til she has completed a two years residence within this District, if the outrages upon her rights or person happened to be committed without the limits of the District. I, therefore, conclude that the true intention and meaning of section five is that no one shall be granted a divorce in this District, in case the cause of divorce occurred out of this District, that is, where the parties at the time the acts were committed entitling a party to a divorce, were not residents of this District, until the party applying for such divorce has resided within this District two full years; or, in other words, no party should be permitted to litigate in this court the question of divorce, when the grounds of it occurred while the parties were domiciled in, and subject to, some other and foreign jurisdiction, until the party applying has resided within this District for two years.

It is true the statute in question is not very happily worded to express the intention I have attempted to deduce from it; I am persuaded, however, that that circumstance will not be regarded as very extraordinary to any one who is familiar with Congressional legislation.

I might, without doing much violence to the language of the fifth section, have adopted the rule of the courts of Scotland, in which it seems to be held not necessary that both parties at the time of the adultery committed, or suit brought, should have their actual domicile in Scotland. There it seems to be sufficient to confer jurisdiction, that the defendant is domiciled in that kingdom, so that a citation may be served upon him; and that a divorce under such circumstances may be granted whether the adultery was committed at home or in a foreign country. See Story's Conflict of Laws, p. 171, § 205.

To such a construction of the statute, the observations of Ferguson, one of the most eminent and learned writers upon Scottish jurisprudence, when commenting upon the rule of law adopted in Scotland, would apply with additional force to this District. That writer says: "These conclusions evidently demonstrate that unless the remedy in this jurisdiction shall be limited either to that which the *lex loci contractus* affords, or to that which the *lex domicilli*, taken in the same fair sense as in questions of succession, might give the public decrees of the only court in Scotland which is competent to pronounce one in such consistorial causes, become proclamations to invite all the married who incline to be free, not in the rest of the British empire alone, but in all countries where marriage is indissoluble by judicial sentence, to seek that ob-

ject in this tribunal. Adultery, and presence within the territory, are the only requisites to found the jurisdiction by citation. What numbers of foreign parties may accept such an offer, and may even commit the crime here for the very purpose of affording ground for the action, it is impossible to conjecture."

A decree must be entered in this case dismissing the plaintiff's petition.

[NOTE.—On appeal to the General Term, that court, November 7, 1864, affirmed the decree dismissing the petition "for the reasons stated in the opinion of Mr. Justice Olin." The dismissal, however, was made "without prejudice."]

Supreme Court of Pennsylvania.

PEOPLE'S BANK OF WILKESBARRE

vs.

LEGRAND.

A, a banking house, held a note indorsed by B, upon which it had obtained judgment against the maker, C. A agreed with C to extend the time of payment of said note if C would pay ten per cent. interest thereon, and continue his banking business with A. In a suit on the note by A against B:

*Held*, That this extension of the time of payment was indefinite and did not discharge B.

Subsequent to the entry of said judgment against C, and in pursuance of said agreement, C had sufficient sums of money on deposit with A to pay said note.

*Held*, That A was under no legal obligation to apply said sums in liquidation of the note, and his omission to do so did not discharge B.

*Seemle*, That if A had had sums of money of C on deposit at the time of bringing suit against B, B could have availed himself of C's right of set-off against the bank.

*Martin v. Mechanics' Bank*, 6 Har. & Johns., 235; *Voss v. German American Bank*, 83 Ill., 599; and *National Bank of Newburg v. Smith*, 66 N. Y., 271, followed; *McDowell v. Bank*, 1 Harrington, 369, disapproved.

Assumpsit, by the Peoples' Bank of Wilkesbarre against Lewis Legrand, upon an indorsement of a promissory note. The defendant pleaded non assumpsit, payment with leave, set-off, &c.

On the trial, before WOODWARD, J., and upon the close of the testimony, counsel agreed upon the following statement of facts as established by the evidence, the same to be in the nature of a special verdict:

"It is agreed that the evidence establishes the following facts, viz.:

"1. That Legrand, the defendant, indorsed Lowenstein's note for \$2,500, which was discounted by plaintiff, not paid at maturity, and duly protested with lawful notice to said Legrand, indorser.

"2. That Lowenstein was a depositor of large amounts in the plaintiff's bank, at the time said note was discounted, to wit, May 15, 1875, and also at the time it was protested, to wit, August 16, 1875.

"3. That suit was brought by the bank against Lowenstein, November 13, 1875, and judgment obtained January 14, 1876. Suit against Legrand was begun December 8, 1876.

"4. That Lowenstein continued to do business with the bank as a depositor until December 8, 1876.

"5. That after suit was brought against Lowenstein, he asked the president of the bank for time to pay the note, and agreed to pay ten per cent. interest thereon, and to continue doing business with the bank, but no particular time was specified or agreed upon.

"6. That Lowenstein had not sufficient funds in the bank to pay the note at the time it matured, but that afterwards, and after the agreement aforesaid, he had at several different times between the maturity of the note, August 16, 1875, and the closing of his account, December 8, 1876, sufficient funds there to pay the note.

"7. That the amount due upon the note, May 18, 1882, is \$2,977.45."

The court directed the jury to render a verdict in favor of the plaintiff for the sum of \$2,977.45, subject, however, to the following points of law reserved:

1. Was Legrand entitled as the surety of Lowenstein to have the money deposited by the latter in the plaintiff's bank, applied to the payment of the note, and was it the duty of the bank so to apply those deposits?

2. Had the bank the right to apply the money deposited by Lowenstein to the payment of the note, under the terms of the agreement on which he continued his business with the bank?

Subsequently the court entered judgment in favor of the defendant and against the plaintiff *non obstante veredicto*, WOODWARD, J., filing the following opinion:

"We consider the law of the case to be properly stated in *Miller v. Stem*, 2 Penn. St. Rep., and that the surety or indorser is discharged—

"1. By virtue of an extension of the time of payment, which was sufficiently definite to meet the requirements of the law; and

"2. Because there was a valuable and sufficient consideration in the case."

The plaintiff thereupon took this writ of error, assigning for error the action of the court:

1st. "In holding that the defendant was discharged by reason of the extension of time, as follows: 'By virtue of an extension of

time, which was sufficiently definite to meet the requirements of the law.

2d. "In entering judgment upon a point which was not reserved.

3d. "In directing judgment to be entered in favor of the defendant *non obstante veredicto*."

HENRY W. PALMER (with whom were DEWITT & FULLER) for the plaintiff in error.

No definite time of extension was agreed upon. It was wholly vague and uncertain. Nothing prevented the bank from suing the next day. A reference to the very case upon which the learned judge bases his opinion (*Miller v. Stem*, 2 Barr, 286), will show that an extension to discharge the surety must be for a time certain, and this is the uniform ruling of our Pennsylvania courts.

The defendant was not relieved from liability by reason of the plaintiff's failure to appropriate the maker's deposits to the payment of the note, and this for three reasons:

1. An endorser, whose liability has become fixed by due protest, is not a surety but a principal: 2 *Parsons on Bills*, p. 243; *Trimble v. Thorne*, 16 Johns., 152.

2. General deposits are not such property of the principal as the bank is bound to avail itself of for the benefit of a surety.

The relation between a bank and its depositor is simply that of debtor and creditor. As against the note of a depositor, held by the bank, the deposit is merely a set-off, of which the surety cannot avail himself: *Bank v. Jones*, 6 Wr., 536; *Morse on Banking*, 28, 30, 31.

3. Lowenstein's deposits with plaintiff were made upon the implied agreement that they should not be appropriated in payment of the note.

Time to pay the note was the sole inducement for making the deposits. Could the bank have rightfully then appropriated these deposits to the payment of the note? In Maryland, Illinois, and New York, the question has been explicitly decided in the negative: *Martin v. Mechanics' Bank*, 6 Har. & J., 235; *Vose v. German Bank*, 83 Ill., 599; *Bank v. Smith*, 66 N. P., 271.

*Per contra* is but a single decision of a court of Delaware: *McDowell v. Bank*, 1 Harrington, 369.

GARRICK M. HARDING (with whom was JOHN MCGAHREN) for the defendant in error.

The definiteness of the extension in this case is apparent, from the terms of the agreement, viz., so long as Lowenstein continued his deposits in the bank and paid the interest. *Certum est quod certum reddi potest*.

In the absence of an express agreement to

the contrary between the plaintiff and Lowenstein, the former was bound to appropriate the latter's deposits to the payment of the note, and his omission to do so discharges the surety. This has been unequivocally decided in the only case that is directly in point and on all fours with ours, where it was said: "If the maker of a note has funds in a bank on general deposit after a note owned by the bank falls due, the bank is bound to apply them in payment of the note, or the indorser is discharged: *McDowell v. Bank*, 1 Harrington, 369.

May 25, 1883. THE COURT: We assume that the matters contained in the fifth clause of the agreement of facts signed by the parties, constituted an actual agreement, though it is not so stated. The sixth clause, however, refers to the subject of the fifth as "the agreement aforesaid," and it has been so treated, both in the printed and oral arguments. As there stated, the agreement between the bank and Lowenstein extending the time for the payment of the note in suit was indefinite, as "no particular time was specified or agreed upon." The learned court below held that the extension of the time of payment was sufficiently definite to meet the requirements of the law, and that it was founded upon a valid consideration, and therefore the indorser was discharged. We are not able to concur with the court as to the character of the agreement for extension of the time of payment. Nothing is said about it in any other part of the paper except the fifth clause, and there it is distinctly stated that no particular time was specified or agreed upon. The remainder of the clause speaks only of a proposition for more time to pay the note, an increase in the rate of interest to be paid, and a continuation of business by Lowenstein with the bank. We see no element of certainty in this as to the time when the note was to be paid. On the contrary that time is essentially indefinite and uncertain, and there was nothing to prevent the bank from bringing suit on the note the next day after the agreement to extend was made. This being so, the indorser could, by paying off the note, demand its surrender and commence an action immediately. This consideration brings the case clearly within the operation of the rule as stated in *Miller v. Stem* (2 Barr, 286), and the line of cases which have followed and never questioned it. All the elements of the rule are thus presented in *Henderson's Adm'r's v. Ardrey's Adm'r's*, 12 Cas. on p. 451: "That a creditor having a principal debtor and a surety, discharges the surety by entering into an agreement with the principal, which can be enforced at law or

in equity, whereby he extends the time of payment for any definite period beyond that mentioned in the original contract, is proved abundantly by our authorities." In *Miller v. Stem*, the case turned upon this very question, together with an absence of consideration. On p. 288, we said: "But mere consent to forbear for a loose and uncertain period does not tie up the creditor's hand," and also, "To take away from the plaintiff a just debt in order to relieve a surety, justice requires there should be a clear, distinct agreement by the creditor, placed beyond reasonable doubt for a time certain, a total forbearance, or forbearance for a reasonable time." In *Brubaker v. Okeson*, 12 Cas. on p. 522, STRONG, J., said: "Nothing short of an agreement to give time, which binds the creditor and prevents his bringing suit, will discharge the surety." As we have observed, there was no agreement to extend the payment of the note in suit for any definite time, and therefore the bank was not prevented from bringing suit at any time, and the judgment of the court below must be reversed for this reason.

Another point was made, however, though not determined by the court, notwithstanding it was reserved, which, if sound, would still defeat the plaintiff's right of recovery. It grew out of the fact that Lowenstein continued to do business with the bank, and had at various times sums on deposit with the plaintiff sufficient to pay the note. It is contended that these funds being within the power of the plaintiff, an obligation arose to appropriate them to the payment of the note, as in favor of the indorser, and this not being done, the latter was discharged. We do not think so. While it is true that a bank is a mere debtor to its depositor for the amount of his deposit, and, therefore, in an action by the bank against the depositor, on a note upon which he is liable, the latter may set off his deposit, yet we do not think the bank is bound to hold a deposit for the protection of an indorser of the depositor. A bank deposit is different from an ordinary debt in this, that from its very nature it is constantly subject to the check of the depositor, and is always payable on demand. The convenience of the commercial world, the enormous amount of transactions by means of bank checks, occurring on every business day in all parts of the country, require that the greatest facilities should be afforded for the use of bank deposits by means of checks drawn against them. The free use of checks for commercial purposes would be greatly impaired if the banks could only honor them on peril of relieving indorsers without an investigation of the state of the depositor's

liabilities upon discounted paper. This question does not seem to have frequently arisen in the courts, but in three cases out of four, to which we have been referred, the right of the bank to pay out the deposit of the party in default on his paper, without relieving the indorser, has been affirmed. Thus in *Maryland*, in the case of *Martin v. Mechanics' Bank*, 6 Harr. & Johns., 235, in an action on an inland bill of exchange, by an incorporated bank, as the holder of the bill which they had discounted before it became due, against the payee, evidence was given that the acceptors of the bill, on the day it became due and for a long time before, and for several months thereafter, kept an account at the said bank by depositing, and from time to time checking out money, and that on the day the bill became due they had no money in bank, but that about a month afterwards a balance was struck between the bank and the acceptors, when they had a sum of money sufficient to have discharged the bill: *Held*, That the bank was entitled to recover the amount of the bill from the payee; that the conduct of the holders of the bill with regard to the acceptors was not a waiver of their right against the indorsers, nor a release as to them, and as between the holders and the acceptors there was no payment. The case was elaborately argued by counsel and fully considered by the court. It was held that a deposit of money in a bank by a regular depositor is not to be regarded as an appropriation by him of the money deposited to the payment of an existing indebtedness of his, but rather for the mutual benefit and convenience of the bank and the depositor, "according to the common course of business in our moneyed institutions." On p. 247, the Chief Justice said: "The mere placing money in bank on deposit by the Messrs. Woods had not of itself the effect to discharge the appellant from his liability as indorser of the bill; and the not diverting, by the plaintiffs, the money from the purpose for which it was so placed and received by them in bank, and applying it to the payment of the bill, was not more to the prejudice of the indorsers, than their forbearing to sue the acceptors, and did not amount in law to a waiver of their right of action against either of the parties." In *Vose v. The German American Bank*, 83 Ill., 599, it was held that where the principal on a note payable to a bank has funds on deposit in the bank after maturity, more than sufficient to pay it, the omission of the bank to appropriate the deposit to the payment of the note will not discharge the surety. In *New York*, in the case of *The National Bank*

of *Newburgh v. Smith*, 66 N. Y., 271, it was held that, where, after the maturity of a promissory note held by a bank, and due protest and notice thereof, the maker makes a general deposit in the bank of an amount sufficient to pay the note, this does not of itself as between the bank and an indorser operate as a payment. In the absence of any express agreement or directions, it is optional with the bank whether or not to apply the money in payment; it is under no obligation to do so. The case of *McDowell v. The Bank of Wilmington*, 1 Harrington, 369, in the State of Delaware, holds the contrary doctrine, but we think the better reason is with the three preceding cases above cited. It is beyond question that the bank, in the absence of any special appropriation of the deposit by the depositor, would have a right to apply a general deposit to the payment of any existing, matured indebtedness of the depositor. But that privilege is a right which the bank may or may not exercise in its discretion. As before stated, a bank deposit creates a form of indebtedness of a peculiar and exceptional character. It is thus stated in *Morse on Banks and Banking*, p. 35: "The bank is under the obligation of honoring the customer's drafts and checks whenever the same are presented for payment, provided that at the time of such presentment the balance of the account, if then struck, would show a credit in favor of the customer of funds, on which the bank has no lien, sufficient to meet the sum called for by the check or draft. The contract so to honor the depositor's orders is implied from the usual course of business. The deposit is made with the tacit understanding that the bank shall respond to the depositor's orders, so long as there is sufficient balance to his credit." It may well be that special circumstances may exist in particular cases, which will convert into an obligation or legal duty, as to indorsers and others contingently liable, that which would otherwise be a mere privilege of the bank. Thus an original direction by the maker and indorser on the one hand, and the bank on the other, that general deposits of the maker should be applied in discharge of the indorsed payer after maturity, or possibly a course of dealing to that effect, might suffice to create such an obligation. But in the absence of such circumstances, and of special directions, we think that general deposits made after maturity of the depositor's obligation, are to be treated in the same manner, subject, of course, to the option of the bank, as the same class of deposits made at any other time and before maturity, that is, according to the general

usage and understanding prevailing in the commercial world.

We fully recognize the rule that where a principal creditor has the means of satisfaction actually or potentially within his grasp, he must retain them for the benefit of the surety, but we regard the case of bank deposits as an exception to the rule. We are not prepared to say, and do not hold, that where the bank has funds of the maker in hand, at the time of bringing suit, the indorser may not avail himself of the maker's right of set off in defense. In such a case the equities of the maker touch the holder directly, and are available to the indorser. Such was the decision of this court in the case of *Sitgreaves v. The Bank*, 13 Wr., 362, and we know of no reason why that doctrine would not be as applicable to the case of a deposit, as to any other form of obligation by the bank to the maker. But in the present case the doctrine is inapplicable, because at the time of bringing this suit it does not appear that the plaintiff held any money of Lowenstein on deposit. In addition to this it was part of the agreement for extension of the time of payment between Lowenstein and the bank that he should continue to do business with the bank. If he could not draw out funds deposited, he could not do banking business, and we think there is a clear implication from the agreement for extension that Lowenstein was to be at liberty to draw against his future deposits notwithstanding the dishonor of the note in suit. Such an understanding would operate against the right of the bank to appropriate such deposits to the payment of the note. In view of these considerations we think the learned court below was in error in not entering judgment in favor of the plaintiff for the amount of the note and interest, on the points reserved, in accordance with the verdict of the jury.

Judgment reversed, and now judgment is entered on the verdict in favor of the plaintiff and against the defendant for twenty-nine hundred and seventy-seven dollars and forty-five cents, with interest from the date of the verdict and costs of suit.

Opinion by GREEN, J.

IN *KANSAS Pacific Railway Company v. Pearly*, 29 Kan., 169, it was held that \$6,500 is too much to condemn a railroad company to pay for the thumb and forefinger of a brakeman's hand.

There are 4,064 languages spoken in the world.



**Passage of the New British Patent Law.**

After prolonged discussion and many amendments the new patent bill for Great Britain has passed both houses of Parliament, has received the royal assent, and will come into force January 1, 1884. We have not yet received the full text of the law, but we are advised by our London correspondent that among its principal features are the following:

A material reduction has been made in the cost of applications for patents, which we roughly calculate will not exceed \$100 for the complete patent, including both agency and government fees for the provisional and final specifications. It is difficult, of course, to say, definitely, what the incidental expenses will be until we can by practical experience ascertain exactly the amount of work involved by reason of the various objections and requirements which may be made by the examiners in each particular case, but we think that the amount named will cover all expenses.

Another feature is the extension of provisional protection to nine months, also to substitution of annual taxes in lieu of the £50 and £100 stamp duties now charged, the same total amount being, however, payable; but the first annual tax not being payable until the fourth year after the grant of the patent. These provisions also apply to patents now in course of application, and also to patents already granted on which the £50 and £100 taxes fall due after January 1st next.

In view of the changes it will readily be perceived that the new act will give a great impetus to the taking out of patents in Great Britain, for it may be fairly calculated that a proportion of the patents taken out in the United States and in other countries will also be secured in England.

It is not proposed, under the new law, to follow the system of examination as in the United States and Germany, but to adhere to the practice hitherto prevailing in England; that is to say, to issue the patent to the applicant without examination, at his own risk. It is, nevertheless, proposed to create a body of examiners whose principal duties will be to see that the invention described and claimed in the final specification is the same as that described in the provisional, and that the scope of the patent is strictly limited to a single invention.

This is an excellent provision, and ought to be adopted in our law. Our present system of official examination is practically, a hindrance and an annoyance to the inventor, not a benefit. It delays the issue of his patent,

and in many cases involves him in expensive and harassing interference contests, which after all decide nothing, as the courts are obliged to review the Patent Office work and determine the validity of the patent. The United States, Canada and Germany are now almost the only countries that pretend officially to examine. In other countries the patent is always granted, and the inventor examines for himself. If he chooses to pay the fees he may take out a patent, but if it should afterward appear that the invention was lacking in novelty or utility, then the patent is worthless. This is a straightforward system, and works well in all countries where it is in vogue; its adoption here would be a decided improvement in favor of inventors; it would lighten the duties of our Patent Office examiners, and enable them to do better work in respect to those necessary features of examination which the new English law contemplates.

Another important provision of the new English law is that power is taken to conclude international arrangements, so that the publication in England of the foreign specification for a period of six months shall not invalidate a patent applied for during that period; furthermore, the duration of the patent will always be fourteen years, notwithstanding the lapsing of a previous foreign patent of a shorter term.—*Scientific American*.

**Dicta.**

Prof. Gray, in his volume on Restraints on Alienation, makes the following remarks on *Obiter Dicta*:

That a judge should no occasionally let fall a remark not strictly necessary to the decision of a case, is neither possible nor desirable; but of elaborate statement, confessedly uncalled for to determine a cause, and confessedly made to forestall opinion on a matter not in judgment, there have been, it is believed, before *Nichols v. Eaton*, (91 U. S., 716), and since *Marbury v. Madison* (1 Cranch, 137), but two cases, in the history of the Supreme Court. They are worth noting.

From 1842 to 1844 a controversy had been going on between the Superior Court of New Hampshire and Judge Story, sitting as circuit judge in the first circuit. The latter claimed, and the former denied, the rights of the courts of bankruptcy to enjoining proceedings in the State courts, and to direct the sheriff to deliver property attached in a State court to assignees in bankruptcy (*ex parte Foster*, 2 Story, 131; *In re Cook*, Ib., 376; *Kittredge v. Warren*, 14 N. H., 509; *In re Bellows*, 3 Story, 428; *Everett v. Stone*, Ib., 446; *Kitt-*

redge v. Emerson, 15 N. H., 227). In 1844, the Supreme Court of the United States was moved to issue a writ of prohibition to a district court sitting in bankruptcy. The court was unanimous against the right to issue the writ; but Judge Story, who delivered the opinion, embraced the opportunity to reaffirm the opinions on the power of the bankruptcy courts which he had maintained on circuit, *Ex parte*, Christy, 3 How., 292). Mr. Justice Catron protested. That the Supreme Court, he said, has jurisdiction "to review the proceedings of a bankrupt court is our unanimous opinion. So far we adjudge, and in this I concur; but a majority of my brethren see proper to go further, and express their views at large on the jurisdiction of the bankrupt court. In this course I cannot concur. Perhaps it is the result of timidity, growing out of long-established judicial habits in courts of error elsewhere, never to hazard an opinion where no case was before the court, and when that opinion might be justly arraigned as extra judicial and a mere dictum by courts and lawyers, be partly disregarded while I was living and almost certainly be denounced as undue assumption when I was no more—a measure of disregard awarded with an unsparing hand here and elsewhere to the dicta of State judges under similar circumstances; and it is due to the occasion and myself to say that I have no doubt the dicta of this court will only be treated with becoming respect before the court itself so long as some of the judges who concurred in them are present on the bench, and afterwards be openly rejected as no authority—as they are not," (p. 322). The words were prophetic. The next year Judge Story died. The Superior Court of New Hampshire entirely disregarded his dicta in *Ex parte* Christy (*Peck v. Jenners*, 16 N. H., 516). The case was carried to the Supreme Court of the United States, and there, in 1849, the decision of the State court was unanimously confirmed (*Peck v. Jenners*, 7 How., 612). The other instance in which the Judges of the Supreme Court, in delivering opinions, have indulged in elaborate dicta, confessedly uncalled for, is the *Dred Scott* case (17 How., 393).

The result of the cases does not augur well for the practice.—*N. Y. Daily Register*.

#### Interesting to Bondsmen.

The decision in New Jersey in the *Dovell* case, reported in the morning papers, is decidedly favorable to that kind and self-sacrificing class, sureties—a class to some of whom we are all indebted from time to time before we can get through any great amount of ser-

vice in responsible positions, and, of course, a class into which all are liable to be constrained to serve now and then.

The bank took a bond for the fidelity of its teller. The teller obeyed the wrongful and fraudulent instructions of his superior officer, the cashier, and made false entries in the books, which enabled the cashier to misappropriate funds. The court held that, however guilty in a moral point of view the teller's conduct was, since he received no money and misappropriated none, his surety was not liable. We do not question that the decision is justified by the language of the condition of the bond; but it would be too much to assume that this is a general rule which will serve in the same way to protect all bondsmen when their principal is not found to have profited pecuniarily by malversation.

The best drawn bonds now in use as security for the fidelity of employees cover this point expressly by a clause binding the employee to make known to his chief any such information affecting the institution, and to provide against the chief himself being the wrongdoer, sometimes two superiors, not likely to be confederates, are named. This is rather a hard and risky bond to exact, for few employees would remember, if they discovered a defalcation, that they were bound to disclose it to two separate officers, but doubtless the condition is legal and enforceable.

There could not have been such a condition in the bond taken by the New Jersey bank.

The principle which the New Jersey court follow, of not holding the surety, unless the terms of the instrument clearly hold him is a sound one, and well illustrated in the recent case of the *National Bank v. Conklin*, 90 N. Y., 116.—*The N. Y. Daily Register*.

A Texas jury has sentenced a murderer to ninety-nine years in the penitentiary.

## The Courts.

### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

OCT. 2, 1883.

*In re* Alfred G. Osborne. Bond as justice of the peace approved.

United States on relation of S. V. White. Rule issued on John J. Knox returnable on the 22d instant.

*Clarke v. Krause*. Reading of record completed. *Woodruff v. National Shelf and File Company*. Motion to dismiss appeal entered.

OCT. 4, 1883.

*Rumstetter v. Atkinson*. submitted.

*Barrett v. National Bank of the Republic*.

**Death of Barrett suggested.**

Eckerc v. Blackburn. Dismissed.  
 Raabe v. Raabe. Dismissed.  
 Kerngood v. Gusdorf. Dismissed.

**EQUITY COURT.—Justice James.**

OCT. 1, 1883.

Kolb v. Kolb. Order appointing Minnie Kolb guardian ad litem.

Murdock v. Fletcher. Portion of order of July 16, 1883, revoked.

Dugan v. Clark. Motion for substitution of trustee overruled, and trustee directed to receive purchase.

Ridenour v. McClelland. Order appointing William Pierce Bell trustee to sell.

Quiller v. Quiller. Divorce decreed.

Washington Beneficial Endowment Association v. Wood. Order allowing John J. Knox, commissioner of Freedman's Savings and Trust company, to intervene.

Colley v. Green. Restraining order granted, returnable October 8, 1883.

Hudson v. Hudson. Divorce granted.

Rice v. Rice. Further proof of abandonment allowed to be taken.

King v. King. Divorce granted.

Green v. Forsberg. Sale ordered and Fillmore Beall appointed trustee to sell.

In re B. U. Keyser, receiver. Leave given to compound indebtedness of Louis Leclerc.

Vincent v. Vincent. Divorce granted the wife.

Barbour v. Gilmore et al. Pro confesso against Gilmore. Baker & Darling set aside.

Hampton v. Hampton. Leave to proceed under writ of attachment granted.

OCT. 2, 1883.

Calvert v. Eaton. Order substituting Jesse Harolson as justice.

Callaghan v. English. Sale ordered and John A. Clarke appointing trustee to sell.

Barber et al. v. Gilmore. Order vacating marshal's return and pro confesso set aside.

Whelan v. McCarthy. Order allowing Timothy McCarthy to become party and Samuel T. Drury appointed guardian ad litem.

Brown v. Brown. Trustee authorized to cash notes and distribution directed.

Portner v. Leohard. Thomas E. Waggaman made party complainant and sale ordered.

Borland v. District of Columbia. Cause continued and leave given to amend bill.

In re accounts of United States District Attorney. Accounts approved for third quarter, 1883.

OCT. 4, 1883.

Mason v. Mason. Sale ratified nisi.

Thompson v. Kendall. Bill dismissed for want of prosecution.

F. S. and T. company v. Rooks. Sale ratified nisi.

Dayton v. Dayton. Reference to auditor ordered.

Hall v. Hollidge. Substitution of trustee ordered.

Meem v. Marden et al. Pro confesso ordered against certain defendants.

In re William S. Smallwood, lunatic. Annie J. Bassett appointed guardian.

Young v. Gaddis. Order authorizing John M. Young to withdraw exhibits.

Lerch v. Moses et al. Pro confesso against McKnight and Burns granted.

McBlair v. Waggaman et al. Pro confesso against all the defendants except Waggaman.

Turner v. McGowan. Testimony ordered taken before Examiner E. D. F. Brady.

May v. Stone and Marble company. Demurrer ordered.

OCT. 5, 1883.

Mutual Relief Society v. Higgins et al. Pro confesso against Eli Higgins.

Marshall v. Marshall. Testimony ordered taken before Examiner A. A. Brooke.

Butler v. Butler. Motion for receiver denied.

Browning v. Hunt et al. Pro confesso against Hunt granted.

**The Courts.****CIRCUIT COURT.—New Suits at Law.**

SEPT. 29, 1883.

24784. Simon J. Kemp et al. v. Matthew Goddard. Account, \$524.69. Pliffs attys, Birney & Birney.

24785. Peter Fegan v. John O'Neal. Judgment of Justice Willson, \$47.05. Pliffs atty, S. T. Drury.

24786. Ephraim M. Yount v. Riggles W. Clapp. Note, \$500. Pliffs atty, W. J. Newton.

OCT. 1, 1883.

24787. E. T. Wright & Co. v. George McCarthy. Account, \$335.40. Pliffs attys, Edwards & Barnard.

24788. The United States ex rel. Stephen V. White v. J. J. Knox. Mandamus. Pliffs atty, P. P. Defts atty, N. Wilson.

OCT. 2, 1883.

24789. John H. Hamiter v. Thomas W. Bartley et al. Account, \$395.81. Pliffs atty, I. G. Kimball.

24790. John M. McAvoy v. The Washington Gas Light Co. Certiorari. Pliffs atty, D. E. Cahill. Defts atty, W. B. Webb.

OCT. 3, 1883.

24791. Johanna Bieber v. Christian Hoffman. Appeal. Pliffs attys, Miller and Edwards & Barnard. Defts atty, F. Beall.

24792. Nathan W. Fitzgerald v. Harmon H. Fulton. Slander—Damages, \$20,000. Pliffs atty, E. W. Grant. Defts attys, Shellabarger & Wilson.

OCT. 4, 1883.

24793. Thomas W. Smith v. Benjamin F. Orabes. Appeal. Pliffs attys, Hine & Thomas. Defts attys, Edwards & Barnard.

24794. Owen Nugent v. The Baltimore & Potomac R. R. Co. Damages, \$10,000. Pliffs attys, Cook & Cole.

24795. Nathan Born v. Clayton McMichael. Replevin. Pliffs atty, N. H. Miller.

24796. William P. Young v. Mary E. Denison. Account, \$180. Pliffs atty, A. C. Bradley.

OCT. 5, 1883.

24797. Thomas Wilson v. Warwick Evans. Damages, \$10,000. Pliffs atty, H. B. Moulton.

24798. New Orleans National Bank v. Walter Q. Greenham. Damages, \$100,000. Pliffs atty, Charles Thompson, jr.

24799. Thaddeus A. Hopkins v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Pliffs attys, Hine and Hagner & Maddox.

24800. William Fegan v. The Baltimore & Potomac R. R. Co. Damages, \$12,000. Pliffs attys, Cook & Cole.

24801. Addison G. Pennell v. Henry Lemoine. Certiorari. Defts atty, D. E. Cahill.

OCT. 6, 1883.

24802. A. L. Barber & Co. v. Gideon S. Palmer et al. Account, \$4,319.73. Pliffs attys, Worthington & Heald.

24803. Same v. Charles D. Gilmore et al. Account, \$4,319.73. Pliffs attys, same.

**IN EQUITY.—New Suits.**

OCT. 1, 1883.

8784. James W. Colley v. Edward H. Green. Injunction. Com. sol., R. S. Davis.

8785. German American National Bank, upon petition of B. U. Keyser, Receiver. For authority to compound indebtedness of Louis Leclerc. Com. sol., B. U. Keyser.

8786. George W. Ashton v. Sarah J. Ashton. For divorce. Com. sol., James H. Smith.

8787. Amory Shattuck v. Mary S. Shattuck. For divorce. Com. sol., H. B. Moulton.

OCT. 2, 1883.

8728. William W. Whitney et al. v. James Y. Christmas. To sell. Com. sol., J. S. Edwards.  
8730. Caroline Walker v. Philip M. Birch et al. For conveyance. Com. sol., B. T. Hanley.

OCT. 4, 1883.

8731. James Cameron v. Daniel H. Nichols. Judgment Creditors' bill. Com. sol., B. T. Hanley.  
8732. Samuel Butt v. Rebecca A. Butt. Creditors' bill. Com. sol., B. F. Leighton.  
8733. Louisa F. Mitchell v. Benjamin F. Bromman et al. For release. Com. sol., I. Williamson. Defts., sol., R. S. Wallach.

OCT. 6, 1883.

8734. Charles H. Armes v. Thos. C. DuBoise et al. Interpleader. Com. sol., C. H. Armes.

**PROBATE COURT.—Justice James.**

OCT. 5, 1883.

In re Colorado and Willie Dallas; order granting Eda A. Dallas guardian, and bond fixed at \$3,000.  
Estate of George W. Bradley; will admitted to probate and letters testamentary issued to Agnes M. Bradley on bond of \$1,000.  
Estate of Francis Geier; order appointing John B. Geier administrator on bond of \$1,000.  
Estate of Hart L. Strasburger; order appointing Mina Strasburger administratrix on bond of \$500.  
Estate of Erskine Gittings; order appointing Samuel E. Gittings administrator on bond of \$1,500.  
Estate of Elmore W. Tuttle; proof of publication filed.  
Estate of Samuel Kirby, inventory of personalty, amounting to \$21,632.16; returned by executor.  
Will of William Smith filed and partially proven.

**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of David P. Holloway, late of the District of Columbia, deceased.  
All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

REUBEN F. BAKER, Administrator.  
EDWARDS & BARNARD, Solicitors. 40-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. October 2, 1883.**

In the matter of the Will and Codicil of Thomas J. Abbott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Webb and Daniel R. Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will and Codicil should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: 40-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. October 1, 1883.**

In the matter of the Will of Catharine Gossler, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Jacob L. Gossler, of Brooklyn, N. Y.

All persons interested are hereby notified to appear in this court on Friday, the 19th day of October next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
WORTHINGTON & HEALD, Solicitors. 40-3

**Legal Notices.****THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary E. Godey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of October, 1883.

EDWARD GODEY,

LEVIN T. CARTWRIGHT,

Administrators.

FRED. W. JONES, Solicitor.

40-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Turnbull, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of October, 1883.

HENRY TURNBULL,

JEANNIE TURNBULL,

GORDON &amp; GORDON, Solicitors.

40-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elmore W. Tuttle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of October, 1883.

J. B. DUNNING, Administrator.

JOHN J. WEED, Solicitor.

40-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis M. Geier, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of October, 1883.

JOHN B. GEIER, Administrator.

LEON TOBRINER, Solicitor.

40-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding an Equity Court for said District.**

DANIEL MASON

In Equity No. 8558.

RACHAEL MASON ET AL. }

Eugene Carusi, trustee herein, having reported to the court, sale of part of lot No. 14, in square No. 228, (as described in the decree of sale), in the city of Washington, District of Columbia, to Henry C. Thorn, for \$2,610:

It is, this 4th day of October, A. D. 1883, ordered, by the court that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 40-3 R. J. MAIOS, Clerk.

**IN RE ESTATE OF SAMUEL KIRBY, DECEASED.**

Upon the hearing of the petition of W. W. Kirby, this day filed, it is this 28th day of September, A. D. 1883, ordered, that the prayers of said petition be granted unless cause to the contrary be shown on or before the 29th day of October next. Provided, a copy of this order be duly served upon Arthur B. Claxton, personally and be published in the Washington Law Reporter once a week for three weeks.

By the Court.

CHAS. P. JAMES, Justice.

A true Copy.

Test: H. J. RAMSDELL,

Register of Wills, D. O.

39-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

JOHN E. REED ET AL.

Equity. No. 7982.

**GEORGE W. REED ET AL.**  
George P. Goff, trustee in this cause, having reported the sale of the south 42 feet front, by the depth thereof of original lot 10, square 576, in the city of Washington, District of Columbia, to Mary Fuller, for the sum of \$2,100:

It is, this 24th day of September, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 26th day of October, next. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CATHERINE MILLER ET AL.

Equity. No. 8,574.

**MARGARET WERLE ET AL.**  
The trustee in this cause having reported the sale of the real estate mentioned in these proceedings, viz: the western 17 feet and 9 inches front, by the depth of lot 10, in square 456, to Miss Frances Straub and Matthias Straub, for the sum of \$1,550 40; the 17 feet and 8 inches front by the depth of lot 10, in square 450, east of the western 17 feet and 9 inches to Charles P. Miller, for the sum of \$1,027.14; and the eastern 17 feet and 8 inches front by the depth of said lot 10, in said square 450, to Francis Miller, for the sum of \$947.94; and that the terms of sale have been complied with:

It is, this 26th day of September, A. D. 1883, ordered, that said sales be ratified unless cause to the contrary be shown on or before the twenty-seventh day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three weeks before the said 27th day of October next.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 39-3 R. J. MEIGS, Clerk.  
CHAS. A. WALTER, Sol'r. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Kirby, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.  
ARTHUR B. CLAXTON, Executor.

APPLEBY & EDMONSTON, Proctors. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Philadelphia, Penna., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Curtis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of September, 1883  
LEVI CURTIS, Executor,  
458 n. 6th st., Philadelphia, Pa.  
Or to G. W. BALLOCH,  
1006 F. st., city.

R. ROSS PERRY, Solicitor. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.**

In the case of Allan Rutherford, Administrator of John S. S. Maret, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 19th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39-3 H. J. RAMSDALL, Register of Wills.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 26th day of September, 1883.**

DAVID FERGUSON

No. 8717. Eq. Doc. 28.

**GUSTAVUS A. HENDERSON ET AL.**  
On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Gustavus A. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah A. Keating, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of July, 1883.

JOHN F. ENNIS, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William E. Schoenborn, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

MARY A. SCHOENBORN.

CHAS. A. WALTER, Solicitor. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.**

In the matter of the Will of James T. Peake, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased has this day been made by John H. Peake and William C. Peake.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.

WM. B. LORD, Solicitor. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of September, 1883.**

JOHN A. PRESCOTT AND JAMES FRASER,

Trustees,

No. 8708. Eq. Doc. 23.

**SEYMOUR RAY AND MELINDA J. RAY,**  
his wife, VINCENT RAY, SYLVESTER H. RAY, AUGUSTUS F. RAY, LEWIS RAY and FRANK R. RAY.

On motion of the plaintiffs, by Mr. Thos. H. Callan, their solicitor, it is ordered that the defendants, Seymour Ray and Melinda J. Ray, his wife, Vincent Ray, Sylvester W. Ray, Augustus F. Ray, Lewis Ray and Frank R. Ray, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1883.**

MARY EUNICE CLARKE

No. 8,711. Equity Docket 23.

**ANNA O'HARA ET AL.**

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Susan O'Hara, Virginia O'Hara, George E. O'Hara and Julia Eddy nee O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
True copy. 38-3 Test: R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 17th day of September, 1883.

ALICE O. CRAWFORD

No. 8707. Eq. Doc. 23.

v. WILLIAM CRAWFORD.

On motion of the plaintiff, by Mr. John A. Clarke, her solicitor, it is ordered that the defendant, William Crawford, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. 38-3 Test: R. J. MEIGS, Clerk.

**CHANCERY SALE OF VALUABLE UNIMPROVED REAL ESTATE NEAR THE CAPITOL, BEING ALL OF SQUARE FIVE HUNDRED AND SEVENTY-EIGHT.**

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Special Term in Equity, in cause number 8424, Equity Docket 22, wherein Henry K. Willard is complainant, and Andrew Wylie and others are defendants, which decree was passed September 5th, A. D. 1883.

We will, on Tuesday, October 9th, A. D. 1883, commencing at the hour of 3 P. M., in front of the premises, offer at public sale, square five hundred and seventy-eight (578), in the city of Washington. This square will be sold in lots according to the subdivision filed in said cause, and which will be exhibited at the time of sale.

Terms of sale as prescribed by said decree are one-third of the purchase money in cash and the balance in six and twelve months from day of sale; for the deferred payments the purchaser or purchasers shall give their notes, drawing six per cent. interest per annum, secured by deed or deeds of trust on the property purchased.

All conveyancing at the cost of the purchaser or purchasers.

A deposit of fifty dollars [\$50] on each lot must be made when the property is knocked down.

JOHN C. HEALD,

501 F street N. W.

HENRY WISE GARNETT,

No. 2 Columbia Law Building.

Trustees.

DUNCANSON BROS., Auctioneers.

38-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

EDWARD TEMPLE ET AL.

Equity. No. 7767.

v. CHARLES WORTHINGTON ET AL.

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot twenty-eight (28), in square one thousand (1000), to Richard T. Pettit for \$26; lots three (3), five (5) and thirteen (13), in square six hundred and eight (608), for \$168.76; lot seven (7), in square six hundred and ten (610), for \$30; and lot ten (10), in square six hundred and ten (610), for \$40, to B. H. Warner; lot sixteen (16), in square six hundred and ten (610), for \$75; and the south one-half (½) of lot seventeen (17) in the same square, for \$27.50 to N. W. Burchell; lot eight (8), in square six hundred and eleven (611), for \$52.50 to William B. Webb; lot eight (8), in square six hundred and thirteen (613), for \$50; lot seventeen (17), in square six hundred and seventeen (617), for \$251; lot 3 (3), in square east of square six hundred and sixty-four (664), for \$40; lot four (4), in square south of square six hundred and sixty-seven (667), for \$80; lots nine (9) and ten (10), in square east of south of square six hundred and sixty-seven (667), for \$34 each lot; lots twenty-two (22), twenty-three (23), twenty-six (26) and twenty-seven (27), in square south of square six hundred and forty-three (643), for \$200; lots three (3) and twenty-two (22), in square six hundred and forty-two (642), for \$324; lot eight (8), in square east of square six hundred and forty-two (642), for \$260; lot eight (8), in square seven hundred and eight (708), for \$50; lot six (6), in square eighty-eight (88), for \$61; and lot nineteen (19), in same square, for \$100; lot one (1), in square six hundred and nine (609), for \$75; lot five (5), in square six hundred and three (603), for \$65; and lot five (5), in square six hundred and sixty-two (662), for \$75, all to Augustus Burgdorf; and lot fifteen (15), in square eight hundred and seventy-eight (878), subject to all taxes, to B. H. Warner for \$100. And it appearing to the court that the order passed in this cause on the 30th day of July, A. D. 1883, conditionally ratifying these sales, has not been published as therein required, it is, by the court, this 17th day of September, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of October, 1883: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 17th day of October, A. D. 1883.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 38-3 E. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Ragan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883,

RICHARD F. HARVEY, 921 7th street, n. w.

WM. H. DENNIS, Solicitor.

38-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Weaver, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.

38-3

AUGUSTA M. WEAVER, Executrix.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia holding a Special Term for Orphans' Court Business. September 21, 1883.

In the case of Wm. W. Birth and Brenton L. Baldwin, Executors of Caroline E. Birth, deceased, the Executors aforesaid have, with the approval of the court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares [or legacies] or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.

A. B. DUVAL, Solicitor.

38-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 21, 1883.

In the matter of the Estate of Robert Swift, late of the Island of St. Thomas, in the Danish West Indies deceased. Application for Letters of Administration on the estate of the said deceased has this day been made by John St. C. Brookes.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published twice in the Washington Law Reporter previous to the said day.

By the Court.

CHAS. P. JAMES, Justice.

Test: 40-2 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 6th day of September, 1883.

ISABELLA DODSON

No. 8,690. Eq. Doc. 23.

v. JAMES H. DODSON.

On motion of the plaintiff, by Mr. W. Preston Williamson, her solicitor, it is ordered that the defendant, James H. Dodson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 38-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 5th day of September, 1883.

THOMAS B. CRESLEY

No. 8640. Eq. Doc. 23.

v. LUCY J. CRESLEY.

On motion of the plaintiff, by Mr. J. A. Smith, his solicitor, it is ordered that the defendant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy. Test: 36-3 R. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 14, 1883.**

In the matter of the Will of Mary Jaffrey Field, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Richard Crowther.

All persons interested are hereby notified to appear in this court on Friday, the 12th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, **CHARLES P. JAMES, Justice.**  
Test: 37-3 **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of September, 1883.**

**EMMA J. HIGH**

No. 8692. Eq. Doc., 23.

**HENRY HIGH.**

On motion of the plaintiff, by Mr. A. A. Lipscomb, her solicitor, it is this 11th day of September, ordered that the defendant, Henry High, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, **CHAS. P. JAMES, Justice.**  
True copy. Test: 37-3 **R. J. MILES, Clerk, &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of September, 1883.**

**JOHN ADAMS**

No. 8701. Eq. Doc. 23.

**REUBEN B. CLARKE, JOHN WELSH AND FELICIA E. WELSH.**

On motion of the plaintiff, by Mr. Robert J. Murray, his solicitor, it is ordered that the defendants, John Welsh and Felicia E. Welsh, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, **CHAS. P. JAMES, Justice.**  
A true copy. Test: 37-3 **R. J. MILES, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles L. Vertongen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1883.

**LUIGEN E. O. COLLIERE, Administrator.**  
**HANNA & JOHNSTON, Solicitors.** 37-3

**THIS IS TO GIVE NOTICE**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John B. Ruth, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of September, 1883.

**MARIA RUTH, Executrix.**  
**CHARLES A. WALTER, Solicitor.** 37-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.**  
**THE NATIONAL UNION INSURANCE CO.**

**v.**

No. 8664. Eq. Doc. 23

**JOHN B. TYLER AND OTHERS.**

On motion of the plaintiff, by Mr. A. S. Worthington, its solicitor, it is ordered that the defendants, Albert O. S. Kelley, Thomas B. Ryan, Margaret Heitzel and Henry R. Selden, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court, **CHAS. P. JAMES, Justice.**  
True copy. Test: 36-3 **R. J. MILES, Clerk.**

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. September 14, 1883.**

In the case of Martin Becker, Executor of Michael Henry Becker, deceased, the said Executor aforesaid has, with the approval of the Court, appointed Friday, the 6th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**EDWARDS & BARNARD, Solicitors.** 37-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**IN BANKRUPTCY.**

In the Matter of **THOMAS B. ENTWISLE** and **GEORGE O. BARRON**, individually and as co-partners under the firm name of **ENTWISLE & BARRON.** Case No. 341.

Upon consideration of the report of James S. Edwards, assignee of Thomas B. Entwisle and George O. Barron, and of the firm of Entwisle & Barron, bankrupts, filed herein on the 15th day of September, 1883, submitting a proposition, or offer, on the part of the said Thomas B. Entwisle and Mary M., his wife, to compromise the suit brought against them by said assignee in this court, being Equity Cause No. 6462, upon the terms in said report mentioned:

It is this 15th day of September, A. D. 1883, ordered, adjudged and decreed, that the said compromise settlement be confirmed, on the terms stated in said report, on the 17th day of October next, unless cause to the contrary be shown on or before that date: Provided a copy of this order be published once a week for three successive weeks in the two newspapers known as the "Evening Star" and the "Washington Law Reporter," printed and published in the city of Washington, in the District aforesaid, before said last mentioned date.

By the Court, **D. K. CARTER, Chief Justice.**  
A true copy. Test: 38-3 **R. J. MILES, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ida K. Davie, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883.  
**ROBERT G. DYRENFORTH, Executor.**

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary Wilson, alias Mary Sayre, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1883.  
**REBECCA HINTON, Administratrix.**

**A. C. RICHARDS, Solicitor.** 37-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Bernhard Berens, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1883.  
**MAGDALENA BERENS, Ex'r.**  
**WARREN C. STONE, Sol'r.**



# Washington Law Reporter

WASHINGTON - - - - - October 13, 1883

GEORGE B. CORKHILL - - - EDITOR

## Railway Legislation in the Different States.

The following interesting summary of recent railway legislation in the various States was given in an address before the American Bar Association at Saratoga, N. Y., in August. It covers the work of the preceding twelve months:

Alabama makes it a misdemeanor for two or more railroads to make any pooling arrangements whatever for the purpose of preventing fair and free competition, the provisions of the act extending to arrangements made outside of the State to be executed within it; and also prohibits their making discriminating rebates from their tariff rates.

In Arkansas any railroad may now cross, join, intersect or unite with "any other railroad within the State," which must, under prescribed penalties, co-operate and furnish all necessary facilities. Both companies are compelled to stop their trains at the point of union or intersection, and are prohibited from discriminating in any manner against the freight or passengers of the other.

In Connecticut all railroads must hereafter, in their public time-table, conform to the standard time of the State, which is that of New York city. In the same State any railroad owning a line built or unbuilt, to an adjoining State, may consolidate with any connecting road, built or unbuilt in the latter State.

Florida now permits the husband, wife or minor child, or, if there be none, the administrator of one killed through the negligence of another, to sue for the value of the life in all cases in which the deceased, had he lived, could have sued for the resulting damages.

Railroads doing business in Illinois must hereafter keep open in that State all necessary books for the transfer of their stock; and must also keep their depots open and well lighted and heated for at least a half hour before and after the arrival and departure of trains.

Minnesota has declared the wilful neglect or gross negligence of any officer or employee of any railroad resulting in the death of any person to be manslaughter in the third degree; where an injury is inflicted which does not

result in death, the punishment shall be by fine and imprisonment.

In North Carolina all equipments and rolling stock of every description shall hereafter be subject to judgments against the company using and controlling them, unless the vendor's lien shall be recorded; and any such claimed by the vendor must have his name plainly marked on both sides.

Recent decisions of the Supreme Court of Tennessee, to the effect that damages in suits by the next of kin for death caused by the omission or fault of another, must be only such as the deceased could have recovered had he lived, have provoked an amendment of the statute by which the recovery shall hereafter embrace, "not only damages for the mental and physical suffering of the deceased, but also the damages resulting to the next of kin."

Vermont has passed three acts upon this subject, of which the first, entitled, "An act to prevent unjust discrimination," does not differ materially from the previous legislation of other States for the same purpose. The second permits the companies to fix their own rates of toll for freight and passengers; but the supreme court may, upon the petition of three freeholders, and after notice to the company, reduce the toll in its discretion. The third grants to the railroad commissioners power to fix the times when passenger trains of connecting roads shall connect with each other.

West Virginia makes provision for the manner in which railroads may extend their lines beyond their present termini; but the Baltimore & Ohio and Northwestern Virginia railroads are especially excepted in the act.

Another statute of the same State enacts that no injunction shall be granted by any court or judge to restrain the collection of taxes on any railroad except upon the ground of the unconstitutionality of the tax. Should the legislature take a fancy to tax any railroad to the full extent of its value, and thus destroy it at one blow, this act seems to deprive the unfortunate corporation of any remedy.

The legislature of Texas gave long and earnest attention to the subject of the proper control of railroads, and it culminated in the passage of the act of April 10, 1883, for the appointment of the "State engineer," whose duties and powers are large but well defined. He must personally visit each railroad in the State twice every year, listen to complaints and grievances, and endeavor to correct them. If he fails to correct them, and any law is violated, he must report to the governor and attorney-general so that suits may be brought.



# Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

UNITED STATES

vs.

EDWARD W. W. GRIFFIN AND WILLIAM T. GRIFFIN.

General Term. Criminal Docket, 1014.

Decided March 5, 1864.

1. This court has jurisdiction of all crimes committed in this District known to the common law, or created by those English statutes in force in this country, or created by statutes of Maryland in force at the time of the cession of this District to the United States and not subsequently repealed, or created by act of Congress, which may be tried and punished according to the forms of proceeding known to the common law, that is, by presentment and indictment by a grand jury, and trial before the petit or traverse jury.
2. The "crimes and offenses" referred to by the fifth section of the act of Congress of February 27th, 1801, are all crimes and offenses which are cognizable, that is, triable and punishable, according to the proceedings at common law.
3. At common law, he who, without right, entered upon the freehold and possessions of another, "with force and arms, and with a multitude of people," and expelled the rightful occupant or possessor, was guilty of a misdemeanor, and was liable to be indicted by a grand jury, tried by a petit jury, according to the forms of proceeding at common law, and sentenced to fine and imprisonment.
4. The gist of this offense consisted in entering *without right*, for he who entered upon the possessions of another, and even expelled the actual occupant, if unaccompanied by an assault or battery of the person expelled, might have been guilty only of a simple trespass, and a simple trespass upon the freehold was not an indictable offense at common law.
5. At common law, he who had the right of entry—that is, he who had the right to the possession of real estate—committed no indictable offense in taking that possession even with "force and arms," or "with multitude of people."
6. The statute of the 5th of Richard II, which is in force in this District, changed the common law only so far as to make it an indictable offense, punishable according to the forms of proceeding at common law, to forcibly enter into lands and tenements with strong hand and multitude of people, even though the party entering had the right of possession at the time of his entry.
7. The word "ransom" as used in the statute means not only a fine, but a severe fine.
8. As the act mentions no court or tribunal as having jurisdiction or cognizance of the offense mentioned in it, it follows that every tribunal

proceeding according to the course of the common law, and having general jurisdiction for the trial of crimes and misdemeanors may take cognizance of the same when committed within its jurisdiction.

9. Such an offense is, therefore, cognizable by this court upon an indictment charging it, and concluding, "against the form of the statute in such case," &c.

## STATEMENT OF THE CASE.

The defendants were indicted for a forcible entry and detainer. The indictment alleges that one Andrew J. Black, being possessed of a certain lot and premises for a certain term of years, whereof two years remained unexpired at the time of the finding of said indictment, the defendants, with force and arms and with strong hand, entered upon said premises and expelled the said Black out of possession and with force and arms, and the indictment concludes with the language "against the form of the statute in such case made and provided, and against," &c.

To this indictment the defendant interposed a plea to the jurisdiction of this court, on the ground that the offense charged in the indictment was cognizable before justices of the peace, and not in this court. The questions sought to be raised by this plea was ordered by the judge presiding in the criminal court, to be heard in the first instance at the General Term.

UTERMEHLE and NORRIS for defendants.

NATHANIEL WILSON for the United States.

Mr. Justice OLIN delivered the opinion of the court.

The theory of the defence sought to be interposed in this case, is that the offense charged in the indictment, if any, was created by certain English statutes conceded to be in force in this District (and to which reference will be hereafter more particularly made), but that all proceedings under and in pursuance of those statutes, whether by way of punishment for their violation or remedy to the party aggrieved, were cognizable in the first instance exclusively before justices of the peace, and that the only authority this court possesses upon the subject, arises from its general supervisory power over inferior magistrates and subordinate judicial tribunals.

It was not denied upon the argument of this case, and we think cannot be successfully, but that this court has jurisdiction of all crimes committed in this District known to the common law, or created by those English statutes in force in this country or created

by statutes of Maryland in force at the time of the cession of this District to the United States and not subsequently repealed, or created by act of Congress, which may be tried and punished according to the forms of proceeding known to the common law; that is, by presentment and indictment by a grand jury, and trial before the petit or traverse jury.

By the act of Congress of 27th of February, 1801, the Circuit Court for the District of Columbia was created. By the 5th section of that act it was declared, "said court shall have cognizance of all crimes and offenses committed in said District." By all crimes and offenses here spoken of are unquestionably meant all crimes and offenses which are cognizable, that is triable and punishable, according to the proceedings at common law.

The main question in this case, therefore, is whether the statute of the 5th of Richard II, chapter 8, or the statute of the 15th of Richard II, chapter 2, or the 8th of Henry VI, chapter 9, or the statute of the 21st of James I, chapter 15, created an offense punishable by the common law, proceeding by indictment of the grand jury and trial before the petit jury; or whether those statutes so altered or modified the common law upon this subject of forcible entries or detainers in reference to the possession of real estate, as to render it proper to charge in the indictments that the offense was committed, "against the form of the statute in such case made and provided," &c.

To answer this question, it is important to ascertain what was the law prior to the enactment of the statute of the 5th of Richard II, and to examine and ascertain how the provisions of that act affected or modified existing law.

It is agreed on all hands that, by the principles of the common law, he, who without right entered upon the freehold and possessions of another, with force and arms, and with a multitude of people, and expelled the rightful occupant or possessor, was guilty of a misdemeanor, and was liable to be indicted by a grand jury, tried by a petit jury, according to the forms of proceeding at common law, and sentenced to fine and imprisonment.

It will be observed here, that this offense at common law did not consist in entering upon the possessions of another, and even expelling the actual occupant, which might be all accomplished by simply a trespass, not even accompanied by an assault or battery of the person expelled, and a simple trespass

upon the freehold was not an indictable offense at common law.

We think the weight of judicial authority is that, before the passage of the statute of the 5th of Richard II, that he who had the right of entry—that is, he who had the right to the possession of real estate—committed no indictable offense in taking that possession even with "force and arms," or "with multitude of people," as described in the technical language of the law. At this day, the unqualified ownership of personal property brings with it the right to its possession, and he *alone* who resists an attempt, simply to take that possession, may be guilty of a breach of the peace.

Such being the state of the common law in reference to forcible entries upon lands, the statute of the 5th of Richard II, declaring that, "none shall make entry into any lands and tenements but in cases where entry is given by law; and in such case not with strong hand, nor with multitude of people, but only in a peaceable and easy manner, on pain of imprisonment and ransom."

This is substantially all the provisions of the 5th of Richard II upon the subject of forcible entries. What change did it work in the common law? Obviously none other than this. It made the forcible entry into lands and tenements with strong hand and multitude of people an indictable offense, though the party entering had the right of possession at the time of his entry. This statute then simply changed the common law in the particular I have adverted to, viz., it constituted an offense indictable and punishable according to the forms of proceeding at common law, to enter with strong hand and multitude of people into the possession of lands and tenements, notwithstanding the person so doing had a right to the possession of such lands and tenements.

It is immaterial to inquire whether this statute created a new offense, or simply reenacted the common law. It defined an offense and made that offense cognizable in all courts proceeding according to the rules of the common law empowered to hear and determine felonies and misdemeanors, and such offense was cognizable in no other court or tribunal. The language of the statute forbids the act of forcible entry, &c., "under pain of imprisonment and ransom." The word ransom means not only a fine, but a severe fine. The act mentions no court or tribunal as having jurisdiction or cognizance of the offense mentioned in it, or created by it. It necessarily followed, then, that every tri-

bunal proceeding according to the course of the common law, and having general jurisdiction for the trial of crimes and misdemeanors would take cognizance of this offense when committed within its jurisdiction.

Now, if the statute of 5th Richard II be in force in this District (and that was conceded on the argument of this case by the learned counsel for the defendants), and if it creates or *defines an offense* cognizable by any court of general jurisdiction for the trial of crimes and misdemeanors, proceeding according to the forms of the common law, it would seem to follow demonstrably that the offense charged in this indictment is properly cognizable in this court, and that the indictment properly concludes "against the form of the statute in such case," &c.

Several other questions of interest were discussed upon the argument of this case, which may arise on the trial of this cause in the court below. Such as what judgment can be given upon a conviction of the defendants; whether that court can award restitution as part of its judgment, and whether the complainant is a competent witness upon the trial of the cause, &c. But we do not deem it necessary to decide those questions now. They must be left to be decided by the court below when they arise.

The order of the court is, that the plea of the defendants be overruled and the papers remitted to the court below, with liberty to the defendants to plead to the merits to such indictment.

## United States Supreme Court.

OCTOBER TERM, 1883.

FIRST NATL. BANK OF XENIA *vs.* STEWART.

*National Bank—Ultra Vires—Loan on its Stock.* A national bank made a loan upon a pledge of its own shares, and afterwards sold the shares to obtain payment of the loan, which exceeded the amount realized from the shares.

*Held*, that the owner of the shares could not recover from the bank, the amount realized from the sale of the shares on the ground that the statute forbids a national bank to take its own shares as security.

IN ERROR to the United States Circuit Court for the Southern District of Ohio.

The plaintiffs are administrators of the estate of Daniel McMillan, deceased, and the defendant is the First National Bank of Xenia, a corporation formed under the National Bank Act of the United States. The action is brought to recover the sum of \$4,200 with interest; the complainant alleging that in October, 1876, the bank was in possession

of thirty shares of its capital stock belonging to the deceased; that it then unlawfully converted them to its own use and sold them, receiving, therefor, the sum mentioned, which it refuses to account for or deliver to the plaintiffs, although a demand for it has been made. The bank, in answer to the complaint, avers that in April, 1876, the deceased was owing to it a debt previously contracted, greater in amount than the value of the shares of capital stock; that it being necessary to secure the bank from loss, he delivered to it certificates of the shares with other property, as collateral security for the debt; that in October, 1876, the debt being unsatisfied and overdue, the bank sold the shares at their full market value, and applied the proceeds as a credit upon it; and that after such application a large amount remained due to the bank, which is still unpaid. The evidence produced at the trial tended to show that the shares of stock were delivered by the deceased to the bank as collateral security for the money loaned to him at the time, and continued to be thus held until they were sold. The court charged the jury that if they found from the evidence that the bank stock was delivered by the deceased to the bank as a pledge or collateral security for a loan of money made by him at the time, the plaintiffs were entitled to recover the amount of proceeds, with interest from the time of sale; as the defendant was prohibited by the currency act from thus receiving its own stock. To this charge the defendant excepted. The plaintiffs recovered a verdict, and to review the judgment entered thereon, the case was brought to this court on writ of error.

FIELD, J., in delivering the opinion of the court, said: Section 5201, of the Revised Statutes, declares that "no association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the association."

While this section in terms prohibits a banking association from making a loan upon the security of shares of its own stock, it imposes no penalty, either upon the bank or borrower, if a loan upon such security be made. If, therefore, the prohibition can be urged against the validity of the transaction by any one except the government, it can only

be done before the contract is executed, while the security is still subsisting in the hands of the bank. It can then, if at all, be invoked to restrain or defeat the enforcement of the security. When the contract has been executed, the security sold, and the proceeds applied to the payment of the debt, the courts will not interfere with the matter. Both bank and borrower are in such case equally the subjects of legal censure, and they will be left by the courts where they have placed themselves.

There is another view of this case. The deceased authorized the bank, in a certain contingency, to sell his shares. Supposing it was unlawful for the bank to take those shares as security for a loan, it was not unlawful to authorize the bank to sell them when the contingency occurred. The shares being sold pursuant to the authority, the proceeds would be in the bank as his property. The administrators, indeed, affirm the validity of that sale by suing for the proceeds. As against the deceased, however, the money loaned was an offset to the proceeds. In either view the administrators cannot recover. The judgment of the court, therefore, must be reversed, and the cause remanded for a new trial; and it is so ordered.

#### **Pregnancy Before Marriage.**

*Superior Court of New York—Special Term.*

**GEORGE BARTH** Against **AUGUSTE BARTH**,  
Formerly **AUGUSTE WIGAND**.

In an action for dissolution and annulment of the marriage between plaintiff and defendant, on the ground that his consent thereto was obtained by the fraud of defendant:

*Held*, That the pregnancy of the woman at the time of the marriage, in cases where the marriage had been consummated in execution of the contract, is not a fact going to the essence of the contract or defeating its essential purposes; that such pregnancy is not a permanent disability preventing the performance of marital duties; that the woman is under no legal obligation to disclose the fact, and, unless the man is misled and deceived on the subject by some artifice, misrepresentation, or act of concealment as to the woman's condition, no fraud can be imputed to her whereby his consent to the contract has been obtained which would justify the court in declaring the contract void on that account.

**O'GORMAN, J.**—This is a motion on the part of the plaintiff to confirm the report of a referee, and for judgment dissolving and annulling the marriage between plaintiff and defendant, on the ground that his consent thereto was obtained by the fraud of the defendant. The only authority of law for this action is found in section 1743 of the

Code of Civil Procedure, which empowers a court to declare a contract of marriage void in cases where the consent of one of the parties was obtained by force, duress or fraud.

I have read the testimony taken before the learned referee, his opinion, and the authorities cited by him, with all the attention which the care bestowed by him on the consideration of the case deserves, without, however, being able to satisfy myself either as to the competency of the testimony or the sufficiency of the proof, even if the testimony were competent.

The plaintiff avers in his complaint that he and the defendant were married in the city of New York on the 3d day of March, 1883; that the marriage was consummated; that he and she lived together as man and wife until the 5th day of April, 1883, when she was delivered of a living child; that he was not the father of said child, and never had sexual connection with the defendant prior to said marriage; and that up to about the day when the defendant was delivered of said child, plaintiff was wholly ignorant of the defendant's pregnancy, and that after the delivery of said child he ceased to live with her; that the defendant, prior to said marriage, informed plaintiff that she had never been married, but was a pure, chaste and virtuous single woman; and that she, by her artifice in her mode of dress, and by her cunning, deceived plaintiff as to her pregnancy, and that he had no knowledge of her pregnancy until the birth of said child; and that she thus fraudulently induced plaintiff to contract said marriage and to consummate the same.

If these allegations of direct deceit and misrepresentation had been sustained by evidence, but little difficulty would have been experienced in the case. The defendant did not answer or appear in the action. Of the marriage of the parties, and the birth of the child in one month and two days after the marriage, there is sufficient evidence. The proof necessary to overcome the ordinary presumption of law that the plaintiff himself was the father of child born in wedlock, depends wholly on declarations of the defendant, and on the direct testimony of the plaintiff himself. The alleged father of the child was not produced as a witness, and although he appears to be a resident of the city of New York his absence is not accounted for.

Section 1753 of the Code of Civil Procedure provides that in actions to annul a marriage, the declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced.

It was held in *Montgomery v. Montgomery* 3 Barb. Ch. Rep., 132, "that the court does not annul a marriage on mere admission of the defendant of the facts charged in the bill. Courts cannot safely act on such admissions, for the necessary result of receiving such evidence to annul a marriage would be to produce collusion between parties, both of whom were willing to be released of the matrimonial tie."

In this opinion I fully concur, and applying this rule to the case at bar, the declarations made by the defendant that a man other than the plaintiff was the father of her child, must be stricken out as incompetent, and the testimony of the plaintiff himself, that he was not the father of the child, remains as the only evidence of that fact."

This testimony of the plaintiff himself, even if it were clearly competent, is not, in my opinion, sufficient to overcome the great inherent improbability of his statement that he was during his cohabitation with the defendant for one month and two days immediately before her confinement wholly ignorant that she was pregnant; and if he knew that she was pregnant, and knowing it, continued to cohabit with her, the presumption is irresistible that he was himself the father of the child.

This insufficiency of proof might perhaps be supplied by further testimony against which such objections as those above stated do not exist, and to send the case back to the same referee to take such further testimony, if such be attainable, would perhaps sufficiently dispose of the present motion.

It seems, however, proper that I should now call attention to another difficulty in the way of the plaintiff's success in this action.

Even if the fact of the defendant's pregnancy by a man other than the plaintiff had been sufficiently proved, there still remains the question, of no less importance, whether the consent of the plaintiff to the contract of marriage was obtained by fraud. There is no evidence whatever of any statement made by the defendant to the plaintiff, or by any one on her behalf, before the marriage, that she was chaste and virtuous, or that anything was said to the plaintiff by any one on the subject. There is no evidence whatever of any artifice resorted to by her in her mode of dress, or in any other way, in order to conceal her pregnancy, or of any act done or word spoken by her on her behalf tending to mislead or deceive the plaintiff on the subject. In these respects, the allegations of the complaint are wholly unsustained by proof. All that appears is that she did not, before her marriage,

voluntarily disclose the fact of her pregnancy to the plaintiff, but kept silent and left him in ignorance on the subject; and the question here is, whether her mere silence constitutes fraud entitling the plaintiff to a decree annulling the marriage. In other words, is a woman asked in marriage bound, by any duty known to the law, to inform her intended husband of the fact of her pregnancy by a man other than him; and is her silence on the subject, whereby he is left in ignorance of her pregnancy, fraud?

I have not found authoritative decisions of the courts of this State throwing light on this question.

As to the decisions in other States cited by the learned referee, viz.:—*Baker v. Baker*, 13 Cal. Rep., 93; *Reynolds v. Reynolds*, 85 Mass., 602, 609; *Carris v. Carris*, 24 N. J. Eq. Rep., 134; *Morris v. Morris*, *Wright R.*, 630; *Ritter v. Ritter*, 5 Black, 84—although they are entitled to great respect, it will be found, I think, on close examination, that in all of them, except the first named case (*Baker v. Baker*) there was either evidence of some direct affirmative act, or device, or artifice, on the part of the woman or her friends, for the purpose of concealing her pregnancy, and by which act the man was misled; or that the peculiar statute under which the action was brought, vested a large discretion in the court, which was not open to review, or that for some other cause they differed in material respects from the case at bar.

The case of *Baker v. Baker* 13 Cal., 93 is more closely in point. The facts are similar to those in the case at bar, and the statutes in the two cases are in terms the same. I fully concur in all that the learned court there says as to the great and irreparable injury, shame and humiliation that would be inflicted on a man, who, supposing that he had wedded a pure and virtuous woman, found himself compelled by law to live with a woman as his wife who came to him pregnant by another man, and to receive and support as his own child the spurious offspring of another. And it may well be that public policy would justify a statutory provision that a marriage contracted under such circumstances should be pronounced "void *ab initio*."

The question here, however, is not what the law ought to be, but whether under the law as it now stands in this State, and on the evidence produced in this case, even if it were competent and sufficient, the relief prayed for by plaintiff can be granted.

There is no doubt but that all contracts, not only executory but executed, can be set aside and annulled for fraud in case either

party has been induced to enter into the contract by reason of intentional misrepresentation by or on behalf of the other party of any fact which forms the basis or essential ingredient in the contract and its moving cause, without which the party so deceived would not have entered into the contract. A contract so influenced, lacks the free and intelligent consent essential to a contract, and the party thus misled and deceived can have the aid of a court of equity to declare it void, and set it aside and relieve him of liability thereunder. Neither does it seem to be always necessary in such cases, that the consent of the party so deceived should have been procured by means of direct artifice or by expressed misrepresentation and falsehood as to an essential fact, or by any positive and overt act tending to deceive. *Story's Eq. J.*, sec. 147, 187, 207; *Dambman v. Schulting*, 75 N. Y., 62.

It is held that where there is concealment of a fact essential to the contract, as to which fact only one of the contracting parties could have accurate knowledge, and as to which the other party could not by reasonable diligence inform himself, such concealment amounts to a fraud which would justify a court in annulling the contract. *Story's Eq. J.*, sections 147 to 152.

Chancellor Kent lays it down as a general rule that each party is bound in every case to communicate to the other his knowledge of material facts, provided he knows the other to be ignorant of them, and they be not open and naked, or equally within the reach of his observation. 2 *Kent's Com.*, p. 482; *Story's Eq. J.*, sec. 207.

This doctrine, however, is regarded as too broad, and is subject to the qualification that the party in possession of the essential facts must be under special legal obligation, by confidence reposed or otherwise, to communicate them truly and fairly. *Beach v. Sheldon*, 14 *Barb. Rep.*, 72.

What, then, are the "essentialia"—the facts vitally affecting the validity of the contract of marriage?

Ante-nuptial incontinence of the woman, no matter how flagrant, if it do not result in pregnancy, is not a fact touching the essence of the contract and affording ground for declaring a consummated marriage void *Reynolds v. Reynolds*, 3 *Allen*, 605, 607, 608.

Neither is impotence, unless it be incurable, cause for declaring the contract void (*Bishop on Marriage and Divorce*, secs. 179, 183), and sterility, if the marriage has been consummated, has been held not to be ground for declaring the contract void.

The fact of the woman's pregnancy, how-

ever, at the time of the marriage has been held to be a fact so material and essential, that misrepresentation on the subject, whereby the man contracting marriage was misled, is fraud justifying a court in declaring the contract void. *Reynolds v. Reynolds*, 3 *Allen*, 605.

In *Baker v. Baker*, (13 *Cal. Rep.*, supra), the learned court went one step further, and held that mere silence on the part of the woman as to the fact that she was pregnant at the time of the marriage was an implied misrepresentation constituting fraud, on account of which the contract should be annulled. Such a decision would have been, no doubt, in full accord with the rule laid down by Judge Kent, as above set forth, provided the fact thus concealed had been of the essence of the contract and the defendant had been, by reason of trust and confidence reposed in her, under a special legal obligation to disclose the fact of her pregnancy.

I shall be happy to hear argument on this question whenever an occasion for such argument may arise; but at present I am inclined to the opinion that the pregnancy of the woman at the time of the marriage, in cases when the marriage had been consummated in execution of the contract, is not a fact going to the essence of the contract or defeating its essential purposes; that such pregnancy is not a permanent disability preventing the performance of marital duties; that the woman is under no special legal obligation to disclose the fact, and, unless the man is misled and deceived on the subject by some device, artifice, misrepresentation or act of concealment as to the woman's condition, no fraud can be imputed to her whereby his consent to the contract has been obtained which would justify a court in declaring the contract void on that account.

The question is new and important, and I do not hesitate to say that I should have been glad to have found myself able to arrive at a different conclusion. There are arguments against the views I entertain, the weight of which I do not underrate, and there may be others which have not occurred to me. But regarding the question simply as a question of law, I have not found any satisfactory course of reasoning leading to any other result.

Let the case go back to the same referee to take further proof as to the material facts in this case, if such proof be attainable, and report thereon. If no such proof be attainable, the motion to confirm the report now before me must be denied.

Decided September 17, 1883.—*N. Y. Daily Register*.

### The Legal Definition of Insanity.

The conviction of William Gouldstone for the murder of his five children at Walthamstow was inevitable when his case was tested by the law of insanity as laid down by the judges and approved by the House of Lords in M'Naughten's Case (10 Cl. & Fin., 200; 1 C. & K., 130). It was there decided, and it is still the law, that if a man is in a condition of mind to know that the act he is committing is wrong, and consequently punishable, he must be held responsible for the commission of that act. Thus the question of knowledge of right and wrong in the abstract is not now put generally and indefinitely, as was formerly the case after R. v. Bellingham (Coll., 636), but it is put in reference to the *particular act* and the *particular time* of committing it. It is to be hoped that the circumstances attending the Walthamstow murder will convince the legislature that the time has arrived to enlarge the hard and fast rule laid down by M'Naughten's Case. Gouldstone, it is true, was perfectly conscious of the enormity of the crime he was committing; he knew and expressed himself willing to pay its penalty, and according to the present state of the law was clearly guilty of murder; but when it is remembered that there was in his case a total absence of any of the motives which almost invariably dictate the crime of murder, and that insanity was hereditary in his family, we cannot help seeing that, though the murderer perfectly understood the nature of his act and its consequences, nevertheless his control over his own actions was suspended to such an extent that he was no longer a free agent, but became the victim of an insane and irresistible impulse. It is hard to comprehend on what principle a man should be hung for committing an act which it is impossible for him to resist. It may be argued that no man would ever commit a murder unless urged by an insane impulse, and that if the present ruling of the law be enlarged the murderer will always be able to shelter himself under the plea of insanity—the *fai vu rousse* of the French criminal. But it is seldom that no inducement beside an insane impulse is discoverable in the mind of a murderer, and if murder is prompted by absolutely none of the motives which would influence a sane person, if a man kills a human being whom he loves merely because voices in his diseased brain whisper to him, "The devil wishes it," "He must have red blood," or "Your loved ones must die," surely the prevention of a lunatic asylum is better suited to his case than a gallows.—*London Law Times*.

THOSE who are in any way interested in railways have long ago learned not to be surprised at any verdict which a petit jury may render where a railway company is defendant. But the recent deliverance of a South Carolina jury, as reported by our exchanges, will test the nerve of even the most experienced. It seems that a man named Hock, who lived in Lexington in that State, was murdered about two years ago by a negro, who placed his dead body on the track of the Charlotte, Columbia & Augusta railway. By reason of the darkness of the night the corpse was not observed and three trains ran over it before it was discovered. After the bereaved friends had gathered up the fragments they proceeded to hold council. The darkey who killed him was a poor fellow from whom not a cent could be extracted by process of law. To hang him would put no shekels in the pockets of the mourning relatives. But the railway was solvent and able to pay any judgment that might be recovered against it. "Thrift, Horatio, thrift," therefore impelled them to sue the railway company for running over the corpse. Just what right of property the bereaved flock had in the corpse is the problem which puzzles us. If they had intended to sell it to some medical college, a solution would be suggested, for probably it was not adapted to the carving of medical students when three trains had got through with it. But as there was no evidence that such a business transaction had been contemplated, we are compelled to believe that the jury gave their verdict on the ground that the passage of the trains had so affected the appearance of the deceased that the remains could not be enjoyably "viewed" at the funeral. The jurors evidently gave large consideration to the axiomatic fact that three freight trains might unfit the handsomest deceased to undergo this inspection, and also concluded that it would take a considerable sum of money to really remove the friends' grief. Hence they brought in a verdict for ten thousand dollars against the railway company.—*Railway Age*.

THE CANADIAN PACIFIC RAILWAY COMPANY is doing an astonishing work in pushing its line across the American continent, and the work is going on so rapidly and quietly that it has attracted comparatively little attention in the United States. When it is stated that the company already has over 1,900 miles of completed road and 984 miles under construction, that it will have added 640 miles of track this year, that it now employs an army of about 20,000 men, whose wages average \$100,000 per day, the magnitude of the enterprise will be partially appreciated.

**French-American Claims Commission.**

At the last session of the French and American Claims Commission, the following awards were made in cases against the United States, with interest at five per cent.:

Francois C. Mittelbrom, \$300; Joseph Chorreau, \$970; Jules Oger, \$125; Joseph Baque, \$150; Ernest Rethore, \$67; Jean Eugene Feray, \$500; Caroline Follain, \$11,274.74; the heirs of P. G. Chaix, \$550; Jean Billou, \$275; Pierre Guchereau, \$500; Lucile T. Bourgeois, \$500; Emma and Laura Abadie, \$1,300; Charles F. Gailmard, \$100.

Thirty-five cases against the United States were disallowed, as follows:

Paul Lefevre, P. L. Maillette, Maillette & Lefevre, Bercice & Laborde, Alphonse Arnaud, Anne Pradaud, Francis Abadie, Jean Juston, Joseph David, Mary Gaudin, Francois Duplaisir, J. A. Boyer, J. B. F. Barthelemy, Josephine Brunet, C. L. Fellow, J. F. H. Blanchy, Ferdinand Cais, Jean Chanel, Aurelia Gauthier, A. F. Bareyre, G. Lafarque, Laurent Duchen, Jules Chiquet, Pierre Lajousse, Marie C. Gossin, John J. O'Connor, administrator, Adele Ribault, J. J. Du Bernard, Pascal Servat, Honore Gueymard, Joseph Guigon, heirs of A. S. Huguot, Mrs. A. Olle, V. M. Fraytet.

THE Treasury has within its vaults at present \$405,954,564.

## The Courts.

**U. S. Supreme Court Proceedings.**

OCT. 8, 1883.

The court met pursuant to adjournment. Present, the Chief Justice and all the Associate Justices.

The following persons were admitted to practice:

Philip W. Cross, of Newark, N. J.; William S. Day, of Jonesboro, Ill.; Sidney Prear, of Jonesboro, Ill.; W. S. McPhilters, of San Francisco, Cal.; Norman S. Gilson, of Fond du Lac, Wis.; William A. Blount, of Pensacola, Fla.; Marshal Eyre, of San Francisco, Cal.; C. S. Montgomery, of Omaha, Neb.; William A. Senger, of Port Jervis, N. Y.; Alfred Goldthwaite, of New Orleans, La.; Chapin Brown, of the District of Columbia; Charles Howson, of Philadelphia, Pa.

The Chief Justice announced to the bar that the court would commence the call of the docket tomorrow under the twenty-sixth rule.

OCT. 9, 1883.

The following persons were admitted to practice:

William Righter Fisher, of Philadelphia, Pa.; Thomas B. Turley, of Memphis, Tenn.; Edwin S. Chittenden, of St. Paul, Minn.

No. 9. Augustus D. Julliard, plaintiff in error, v. Thomas S. Greenman. On motion of Mr.

William Allen Butler, ordered to be passed and assigned for argument on first court day in January.

No. 969. Thomas Poindexter, plaintiff in error, v. Samuel C. Greenhow, treasurer, etc.

No. 970. A. Austin Smith, plaintiff in error, v. Samuel C. Greenhow.

No. 971. William L. White, plaintiff in error, v. Samuel C. Greenhow.

No. 972. Samuel S. Carter, plaintiff in error, v. Samuel C. Greenhow. Motion to advance submitted by Mr. W. L. Royall in support of the same.

No. 672. H. G. C. Paulson, appellant, v. The Chesapeake & Ohio Railway Co. et al.

No. 1047. Gottfried Bachmann, appellant, v. The Chesapeake & Ohio Railway Co. et al. Motion to advance submitted.

No. 892. A. U. Wyman, Treasurer of United States, plaintiff in error, v. the United States, ex rel. E. P. Halstead, administrator, etc. Motion to advance submitted.

No. 5. The Cumberland & Oxford Canal Corporation, plaintiff in error, v. the State of Maine. Dismissed with costs pursuant to nineteenth rule.

No. 7. The City of New Orleans, appellant, v. the New Orleans, Mobile & Texas Railroad Co. Passed.

No. 8. John W. Jones, appellant, v. Louis McMurray. Dismissed with costs pursuant to sixteenth rule.

No. 10. Augustus Laver, appellant, v. Robert Dennett & Co. Submitted.

No. 11. Henry D. Cone, appellant, v. the Morgan Envelope Co.

No. 12. Henry D. Cone, appellant, v. the Whiting Paper Co. Dismissed with costs pursuant to sixteenth rule.

No. 13. Henry D. Cone, appellant, v. Lewis J. Powers.

No. 14. Thomas, Ludlow & Rogers et al., appellants, v. P. P. Mast & Co. Dismissed with costs pursuant to nineteenth rule.

No. 15. Sarah B. Haskins, appellant, v. the St. Louis & Southeastern Railroad Co. et al. Submitted.

No. 925. The County of Greene, plaintiff in error, v. John Conness. Submitted under twentieth rule.

OCT. 10, 1883.

John G. Winter, of Waco, Texas, was admitted to practice.

No. 997. The Board of Liquidation of the City Debt, appellant, v. the Louisville & Nashville Railroad Co. et al. Motion to advance granted; to be placed on the day call pursuant to section 7, rule 26.

No. 16. Louis H. Mahn, appellant, v. H. Harwood & Sons. Passed.

No. 18. Sarah A. Clayton and Richard Mackey, plaintiffs in error, v. Sarah A. Clayton, etc. Continued.

No. 19. David H. Linebarger et al., plaintiffs in error, v. the Board of Commissioners of Jefferson county. Dismissed with costs under nineteenth rule.

No. 20. Wendell R. King, appellant, v. August Gallun et al. Submitted.

No. 21. The City of Opelika, plaintiff in error, v. Richard C. Daniel. Submitted.

No. 22. Nathaniel Collins et al., plaintiffs in error, v. Joseph Fabian et al. Dismissed with costs under nineteenth rule.



No. 23. C. E. Hovey et al., appellants, v. A. R. McDonald et al. Argument commenced.

No. 24. James W. and Priscilla D. Lovell, appellants, v. the St. Louis Mutual Life Ins. Co. et al. Passed.

No. 25. Ex parte. In the matter of Samuel D. Jackson, appellant. Dismissed with costs pursuant to nineteenth rule.

No. 27. Oliver, Finnie & Co., plaintiffs in error, v. the Rumford Chemical Works, for use of J. N. Payne et ux. Argument commenced.

OCT. 11, 1883.

The following persons were admitted to practice:

E. Coppee Mitchell, of Philadelphia, Pa.; Vespasian Warner, of Clinton, Ill.; George E. Sutherland, of Fond du Lac, Wis.

No. 27. Oliver, Finney & Co., plaintiffs in error, v. the Rumford Chemical Works, for use of J. N. Payne et ux. Argued.

No. 29. Emeline H. Dale, executrix, etc., appellant, v. the United States; and No. 30. The United States, appellant, v. Emeline H. Dale, executrix, etc. Dismissed per stipulation.

No. 33. J. Sherman Hall, plaintiffs in error, v. the Pennsylvania Railroad Co. Continued per stipulation.

No. 35. W. D. Porter, assignee, etc., plaintiff in error, v. Charlotte C. Lazear. Submitted.

No. 36. Annie Lolus, plaintiff in error, v. the Trustees of Brown Township, etc. Submitted.

No. 37. Henry Tete, plaintiff in error, v. Louis Desobry. Dismissed with costs under nineteenth rule.

No. 38. The United States, plaintiff in error, v. Frank L. Jones, administrator, etc., et al. Submitted.

No. 39. The Mayor and Aldermen of the City of Savannah, plaintiffs in error, v. the United States, ex rel. Eugene Kelly; and

No. 40. The Mayor and Aldermen of the City of Savannah, plaintiffs in error, v. the United States, ex rel. A. M. Martin. Dismissed with costs under the nineteenth rule.

OCT. 12, 1883.

The following persons were admitted to practice:

James F. Brown, of Charleston, West Virginia; Charles Thompson, jr., of Washington, D. C.; Frederick A. Nims, of Muskegon, Mich.; Hiram J. Hoyt, of Muskegon, Mich.; J. Edward Earle, of Grand Rapids, Mich.; Benjamin A. Harlan, of Grand Rapids, Mich.; Maurice Langhorne, of Maysville, Ky.

No. 879. Lazarus Scharff et al., plaintiffs in error, v. James and Albert Levy. Motion to advance submitted.

Ex parte. In the Matter of Crow Dog, petitioner. Motion for leave to file petition for writs of habeas corpus and certiorari submitted.

No. 43. Robert C. Hewitt, appellant, v. Peter Campbell. Submitted.

No. 44. The Pennsylvania Railroad Company, appellant, v. The Locomotive Engine Safety Truck Company. Argued.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA. GENERAL TERM.

OCT. 8, 1883.

Clarke v. Krause. Bill dismissed, opinion by Justice Hagner.

In re Stephen D. Tucker. Improvement in

printing machines, patent appeal, passed to the foot of the calendar.

In re A. W. Brenkerhoff. Improvement in treating and curing hemorrhoids, patent appeal, passed to the foot of the calendar.

Rumstetter et al. v. Atkinson et al. Supplemental bill dismissed and decree of special term of October 8, 1883, again affirmed.

Lord v. Dale et al. Motion to strike cause from calendar filed.

Hart v. Gorham et al. Motion to dismiss appeal entered.

OCT. 9, 1883.

Lemont v. Washington and Georgetown Railroad Company. Argued and submitted.

OCT. 10, 1883.

Jaffray & Co. v. Gutman. Motion to dismiss appeal filed.

United States ex rel. A. J. Marsh, executor, v. Secretary of the Interior and Commissioner Dudley. Petition read.

Walter et al. v. Ward. On hearing.

OCT. 11, 1883.

Walter et al. v. Ward. On hearing.

United States ex rel. Ward B. Burnett v. Secretary Teller. Execution for costs.

OCT. 12, 1883.

Walter et al. v. Ward. On hearing.

#### EQUITY COURT.—Justice James.

OCT. 8, 1883.

Koones v. Budd. Sale finally ratified and reference to the auditor ordered.

Hudson v. Hudson. Divorce decree signed.

Dallas v. Dallas. Sale finally ratified.

Patton v. Spier et al. Pro confesso against Mary A. Coyle.

United States v. Shea. Appearance of absent defendant ordered.

Moore v. Harrison. Rule on T. R. Moore returnable October 11.

Power v. Walsh. Sale finally confirmed.

Weggamann v. Weggamann. Sale finally confirmed.

Ames v. Du Bose et al. Appearance of absent defendants ordered.

Burdette v. Burdette. Hearing commenced.

OCT. 9, 1883.

Raoul v. Gaines. Leave to withdraw agreement from files granted.

Taylor v. Clagett. Order appointing R. K. Elliott guardian ad litem.

Barber v. Gilmore et al. Pro confesso as to defendant Presbrey set aside.

Murdock v. Fletcher. Rule against Blundon, Pettit and Dripps discharged.

OCT. 10, 1883.

Phillips v. Walbridge. Auditor's report confirmed in part.

Bangs v. Gideon et al. Appearance of absent defendants ordered.

Patton v. Coyle. Pro confesso against Mary A. Coyle stricken out.

Marshall v. Marshall. Sale ratified nisi.

Baldwin v. Saunders. Rule discharged by consent and defendant allowed to move for reference to the auditor.

McDermott v. McDermott. Sale ratified nisi.

Stinde v. West. Defendant allowed twenty days to take evidence.

Snouffer v. Greenapple. Exceptions to auditor's report overruled.

OCT. 11, 1883.

Mitchell v. Braman. Order appointing Irving Williamson trustee to execute release.

Pitts v. Pitts. Leave to file amended bill granted.

Butler v. Scott. Sale ratified nisi.

Bromer v. Herth. Sale ratified nisi.

Phillips v. Walbridge. Auditor's report confirmed as to claim of T. J. Phillips and certain other claimants.

Allgaler v. Dennis. Demurrer overruled and leave to answer.

OCT. 12, 1883.

Rice v. Rice. Divorce granted.

Poulson v. Keefe. Charles Stanford allowed to intervene.

Hoffman v. Callan. Sale ratified nisi.

Mitchell v. Wool et al. Appearance for absent defendants ordered.

Barber v. Gilmore. Dismissal of bill as to J. R. Riggles ordered.

Dayton v. Dayton. Reference to the auditor.

Leitch v. Williams. United States allowed to intervene.

White v. Doyle. Original and amended bill allowed to be filed and deposit of \$20,000 in registry of the court allowed.

Stickney v. Stickney. Sale ordered and Thomas R. Jones appointed trustee to sell.

OCT. 13, 1883.

King v. King. Divorce decreed.

Tinner v. McGowan. Order substituting J. Levitt Smith as trustee for J. T. McGowan.

Cannon v. Nichols. Appearance of absent defendant ordered.

Walker v. Birch. Appearance of absent defendant ordered.

Kolb v. Kolb. Sale ratified and complainant appointed commissioner to convey.

Cases v. White. Order appointing Thomas J. Myers receiver.

**CRIMINAL COURT.—Justice Wylie.**

OCT. 8, 1883.

The following parties were arraigned and plead not guilty.

Ignatius Nolte, arson. Valentine W. Sellers, counterfeiting, two cases. Michael Knighton, assaulting officer. William C. Chase, libel on Robert Purvis. James B. Loudon and Henry Scott, rape on Dolly Moxley. Cornelius Shea, false pretenses. T. Zell Hoover, false pretenses, and Edwin C. Mason, libel.

Hiram V. Dempster, receiving stolen property. Motion to quash filed.

Josephus Williams, larceny. Pleaded guilty, thirty-two days in jail.

William P. Kellogg, receiving a bribe. Trial set for December 10.

OCT. 9, 1883.

Lucinda Williams, alias Lucy Williams, murder. Not guilty.

Henry S. Davis, assault with intent to kill. Plead not guilty.

William Woodson, larceny. Fiat against William Schouler, surety, for \$500.

Adolphus Woodward, policy. Fiat against A. C. Richards, surety, for \$500.

OCT. 10, 1883.

Lloyd Mudd, assault. Guilty—twenty-four hours in jail.

Richard Queen, assault. Guilty—sixty days in jail.

Julius Eppard, assault. Recognizance forfeited. Theodore Wilson, assault. Recognizance forfeited.

OCT. 11, 1883.

U. S. v. Thomas Dunn; larceny. On trial.

OCT. 12, 1883.

U. S. v. Thomas Dunn; larceny. On trial.

OCT. 13, 1883.

U. S. v. Thomas Dunn; larceny. Verdict, guilty.

**CIRCUIT COURT.—New Suits at Law.**

OCT. 8, 1883.

24804. Vincent L. Ourdan v. The Columbia Bank Note Co. Account, \$1,238. Piffs attys, Birney & Birney.

24805. Allen C. Clark v. Henry C. Balden. Judgment of Justice Hall, \$27.81. Piffs atty, P. P.

OCT. 9, 1883.

24806. Charles G. Stone v. Bernard T. Swartz. Account, \$295.55. Piffs atty, Jno. A. Clarke.

24807. J. L. Elliot v. Chas. E. Barber. Appeal. Defts atty, L. G. Hine.

24808. Beckert & Webster v. Wesley Chapel Methodist Church of Washington, D. C. Account, \$300. Piffs atty, H. B. Moulton.

24809. Peter Fegan v. Horace S. Johnston. Appeal. Defts atty, John E. Norris.

24810. George B. Coburn v. Charles A. McEuen. Notes, \$182. Piffs atty, W. S. Perry.

OCT. 10, 1883.

24811. The United States v. William E. Chandler. Mandamus. Piffs atty, W. W. Warden.

24812. Nathaniel E. King v. Julia A. Powell. Damages, \$5,000. Piffs atty, T. J. Mackey.

24813. Wash. T. Nailor v. William M. Galt. Replevin. Piffs atty, D. O'O. Callaghan.

24814. Charles F. Staeger v. Charles H. Miller. Notes, \$438.34. Piffs atty, H. W. Garnett.

24815. Charles A. Brown v. Frank B. Conger. Account, \$980. Piffs atty, Frank W. Hackett.

24816. Georgianna P. O. Schureman v. George P. Zurchor, administrator, et al. Appeal. Defts atty, A. K. Browne.

OCT. 12, 1883.

24817. George A. Shehan v. John Batters. Note, \$190.06. Piffs atty, James G. Payne.

24818. Martha Allen v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Piffs atty, James G. Payne.

24819. James H. Rhodes v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Piffs atty, James G. Payne.

OCT. 13, 1883.

34820. Thomas P. Sullivan v. Daniel J. Byrne. Appeal.

**IN EQUITY.—New Suits.**

OCT. 8, 1883.

8735. Louisa F. Mitchell v. Jerome R. Wroe et al. For release. Com. sol., I. Williamson.

8736. Elizabeth G. Bangs v. Catharine O. Gideon et al. For sale to make partition. Com. sol., J. E. Latimer.

Defts sol., B. J. Darnelle.

8737. Cornelia Widdicombe v. Thomas W. Widdicombe. For divorce. Com. sol., J. J. Johnson.

8738. Daniel Perry v. Mary F. Ford. For account and receiver. Com. sol., L. C. Williamson. Defts sols., Harris & Oliver.

OCT. 9, 1883.

8739. Charlotte Beverly v. John Beverly. For divorce. Com. sol., Wiswall.

OCT. 11, 1883.

8740. ———

8741. Ealinda Branton v. Wash Braxton. Divorce. Com. sol., Wiswall.

OCT. 12, 1883.

8742. Louise H. Pfaff v. Masonic Mutual Relief Association et al. To designate beneficency and injunction. Com. sol., Jas. G. Payne.

**PROBATE COURT.—Justice James.**

OCT. 12, 1883.

Estate of James Q. Vermillion; day of settlement fixed for November 2, 1883.

Estate of David P. Holloway; inventory of personal property returned.

Estate of Theodore Osterdinger; will filed.

Estate of F. M. Geier; order of sale.

Estate of Samuel Kirby; order dismissing petition of W. W. Kirby and directing executors to take possession of all goods and to sell household goods.

Estate of Percy H. Hall; order appointing George I. Hall administrator on bond of \$5,000.

In re May A. and Emma L. Kellholtz; order appointing Joseph E. Herald guardian on bond of \$500.  
 Estate of Anthony Buchly; order for citation against Anna M. Buchly.  
 Estate of William C. Bamberger; order appointing Hannah Bamberger administratrix on bond of \$500.  
 Estate of Herman H. Dieblich; will admitted to probate and letters testamentary issued.  
 Estate of Robert Swift; order appointing John St. C. Brookes administrator on bond of \$2,600.  
 Estate of H. J. McLaughlin; order appointing Elizabeth Gardner guardian of the children.  
 Estate of Edward P. Walsh; order appointing Mary Walsh guardian of the children.  
 Estate of Emily F. Sullivan; letters testamentary issued to Harriet M. Sullivan on bond of \$1,000.  
 Will of Dennis O'Sullivan filed.  
 Estate of Mary E. Maroney; order appointing John W. Ross administrator on bond of \$2,500.  
 Estate of Mary Jeffrey Field; letters testamentary issued to Richard Crowther on bond of \$30,000.

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

CHARLES H. ARMES, Administrator of  
 Emory W. Du Bose, deceased, complainant,  
 v.  
 THOMAS C. DU BOSE ET AL., defendants.

No 8,734.  
 Equity Docket 23.

On motion of the complainant, it is this eighth day of October, 1883, ordered, that the defendants, Thos. C. Du Bose, William H. B. Du Bose, Hester S. Huggins, Robert J. Huggins, Drucilla C. P. Hallford, J. G. Hallford, Wylie Skinner, O. S. Skinner, A. F. Skinner, N. E. Skinner, H. B. Sklaner, W. M. Skinner, Martha J. Beasley, E. E. Galloway, and—Galloway, her husband, J. H. Beasley, T. S. Du Bose, R. E. B. Du Bose, J. L. R. Du Bose, E. M. L. Du Bose, Oscar Beverley Du Bose, Lucius Belinger Du Bose, Myer Middleton Du Bose, William Perry Du Bose, Laurence J. Stokes, Elliott E. Stokes, Emiline L. Waits, Mary H. Paschall, T. R. Waits, W. V. Paschall, Albert Jordan, and—Jordan, his wife, W. W. Thompson, and—Thompson, his wife, and Frank H. Du Bose, cause their appearance to be entered in this cause on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.  
 By the Court. CHAS. P. JAMES, Justice, &c.  
 A true Copy. Test: R. J. MEIGS, Clerk.  
 By M. A. CLANCY Asst. Clerk. 41-3

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

HORACE H. BROWER ET AL.  
 v.  
 MARGARETHA HERTH.

No. 8,814. Eq. Doc. 23.

This cause coming on again to be heard upon the papers heretofore filed and also upon the trustee's report filed, and having been duly considered, now on motion of P. B. Siltson, plaintiff, attorney, it is, this 11th day of October, A. D. 1883, ordered, adjudged and decreed, that the sale of lots 10 and 11, in square 99, made by said trustees, in pursuance of two decrees passed on the 4th and 12th of September, 1883, which property is more particularly described in the bill in said cause, be and the same is ratified and confirmed unless cause be shown to the contrary on or before the 13th day of November, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of November, next.

By the Court. CHAS. P. JAMES, Justice, &c.  
 A true Copy. Test: 41-3 R. J. MEIGS, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business. October 12, 1883

In the case of Reginald Fendall, Administrator of James O. Vermillion, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
 JAMES H. SAVILLE, Solicitor. 41-3

### Legal Notices.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

HENRIETTA S. BUTLER  
 v.  
 LEONIDAS SCOTT.

Equity. No. 7008.

Upon consideration of the report of R. B. Lewis and James H. Smith, trustees in this cause, of the sale of lot No. 53, in square No. 367, to Frank T. Browning, for the sum of \$2,090 40:

It is, this 11th day of October, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of November, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 41-3 R. J. MEIGS, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

RICHARD MARSHALL, Guardian of  
 Abraham P. Marshall, Plaintiff  
 v.  
 ABRAHAM P. MARSHALL ET AL.,  
 Defendants.

Equity. No. 8291.

Upon consideration of the report of Job Barnard and James H. Smith, trustees, of the sale of lot No. 52, square 367, to Frank T. Browning, for the sum of \$2,277 60. It is, this 10th day of October, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 12th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 12th day of November, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 41-3 R. J. MEIGS, Clerk.

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.

ABIGAIL M. McDERMOTT ET AL.  
 v.  
 JEANNIE A. McDERMOTT ET AL.

No. 1195. Eq. Doc. 8.

William B. Webb, the trustee appointed in this cause, having reported to the court that in pursuance of its decree he made sale of lots numbered one (1), two (2), three (3), four (4), five (5) and twenty-four (24), in square numbered six hundred and twenty-one (621), to Thomas E. Waggaman, at and for the price and sum of sixteen cents per square foot, the whole purchase money being \$9,140 16, that the said purchaser has assumed the payment of the taxes in arrears and unpaid upon the said lots and has paid or secured to be paid the balance of said purchase money: It is, by the court, this 10th day of October, 1883, ordered, that the sale be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the 12th day of November, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 12th day of November, 1883.

By the Court. CHAS. P. JAMES, Justice.  
 A true Copy. Test: 41-3 R. J. MEIGS, Clerk.

#### CHANCERY SALE OF VALUABLE IMPROVED PROPERTY IN THE NORTH-EASTERN PART OF THE CITY, IN SQUARE 908.

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Special Term in Equity, in cause numbered 8,847, Equity Docket 23, wherein Bartholomew Long, is complainant, and Jeremiah Long et al. are defendants, which decree was passed on the 27th day of September, 1883:

We will, on SATURDAY, October the 27th, A. D. 1883, commencing at the hour of 4 1/2 p. m., in front of the premises, offer at public sale, lots six (6) and ten (10), in square eight hundred and eight (808), in the city of Washington, District of Columbia, lot 10, being improved by a two-story brick house, store and dwelling-house on northeast corner of 4th and H streets, n. e.

Terms of sale as prescribed by said decree, are one-fourth cash and residue at six, twelve and eighteen months, in equal payments, the purchaser or purchasers, giving notes bearing six per cent. interest per annum from date of sale and secured by deed of trust upon the property purchased. All conveyancing at the cost of the purchaser or purchasers.

A deposit of one hundred dollars [100], on each lot must be made when the property is knocked down.

HENRY WISE GARNETT, Trustee,  
 No. 2, Columbia Law Building,  
 WILLIAM HENRY DENNIS, Trustee,  
 No. 515 Thirteenth street, n. w.

WEEKS & Co., Auctioneers. 41-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 12th day of October, 1883.**

**MARTIN V. B. HOFFMAN ET AL. } No. 8625. Eq. Doc. 23.**

**LAWRENCE GALLAN ET AL. }**  
Ordered, that the sale made and reported October 11, 1883, by Benjamin F. Leighton, trustee for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of November next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter. The report states that the lot described in complainant's bill sold for \$1,010: \*

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hermann H. Diebitzsch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of October, 1883.  
**MAGDALENE DIEBITZSCH, Executrix.**

**WM. R. WOODWARD, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Magee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.  
**LAURA MAGEE, Executrix.**

**LEON TOBRINER, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Allen, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of October, 1883.

**W. H. M. SMITH,**  
**MARIA B. SMITH,**  
Executors.

**CHAPIN BROWN, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary Jaffrey Field, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1883.

**ROICHARD CROWTHER, Executor.**

**J. J. JOHNSON, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of Margaret Adams, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of October, 1883.

**BENJAMIN P. SNYDER, Executor.**

**E. ROSS FERRY, Solicitor.** 41-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Percy H. Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of October, 1883.  
**GEORGE I. HALL, Administrator.**

**41-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of October, 1883.**

**ELIZABETH G. BANGS. } No. 8736. Eq. Doc. 23.**

**CATHARINE C. GIDEON ET AL. }**  
On motion of the plaintiff, by Mr. John E. Latimer, her solicitor, it is ordered that the defendants, Robert A. Drake, Horace T. Love and Sarah E. Love, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of October, 1883.**

**THE UNITED STATES OF AMERICA } No. 8723. Eq. Doc. 23.**

**JOHN SHKA ET AL. }**  
On motion of the plaintiff, by Mr. George B. Corkhill, its solicitor, it is ordered that the defendant Ambrose B. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**JOHN J. LIGHTFOOT } Equity. No. 5066.**

**WILLIAM BRITT ET AL. }**  
Ordered, that the sales made and this day reported by John J. Lightfoot and L. Cabell Williamson, trustees, be ratified and confirmed unless cause to the contrary be shown on or before the 5th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before the said 5th day of November, 1883. The report states that lots 2, 3 and 4, being a portion of "Part of the Vale" sold for \$35 per acre each in cash.

By the Court. **CHARLES P. JAMES, Justice.**  
A true copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**JESSE LEE ADAMS ET AL. } No. 8408. Eq. Doc. 22.**

**JAMES L. ADAMS ET AL. }**  
Thomas I. Gardner, the trustee in this cause, having reported that he has sold lot ten (10), in square two hundred and sixty-eight (268), in the city of Washington to J. L. Adams, for the sum of two thousand five hundred dollars (\$2,500):

It is, thereupon by the court this 6th day of October, 1883, ordered, that the said sale as reported will stand ratified and confirmed on the 8th day of November next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for three successive weeks in some newspaper printed in the city of Washington, before said 8th day of November next.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
True copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of October, 1883.**

**LOUISA F. MITCHELL } No. 8735. Eq. Doc. 23.**

**JEROME R. WROE ET AL. }**  
On motion of the plaintiff, by Mr. Irving Williamson, her solicitor, it is ordered that the defendants, Jerome R. Wroe, Joseph Shields Wilson, Calvin Gurley Wilson, David Russell Wilson and Martha Ella Murray, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. Test: 41-3 **R. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of October, 1883.**  
**CAROLINE WALKER**

**PHILIP M. BIRCH ET AL.** } No. 8730. Eq. Doc., 23  
 On motion of the plaintiff, by Mr. B. T. Hanley, her solicitor, it is ordered that the defendants, the unknown heirs of James H. Birch, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 41-3 R. J. Meigs, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of October, 1883.**  
**JAMES CAMERON**

**DANIEL H. NICHOLS ET AL.** } No. 8731. Eq. Doc. 23.  
 On motion of the plaintiff, by Mr. B. T. Hanley, his solicitor, it is ordered that the defendants, Rebecca H. Leggett, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy Test: 41-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, October 12, 1883.**

In the case of Henry V. Boynton, Administrator of Anthony M. Seteldo, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

41-3 Test: H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, October 12, 1883.**

In the matter of the Will of Theodore A. Osterdinger, late of the District of Columbia, deceased. Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Alice M. Osterdinger.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of November next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 F. E. ALEXANDER, Solicitor, 432 La. Ave. 41-3

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elmore W. Tuttle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1883.

J. B. DUNNING, Administrator. 40-3  
 JOHN J. WEED, Solicitor.

**THIS IS TO GIVE NOTICE,**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis M. Geier, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1883.

JOHN B. GEIER, Administrator. 40-3  
 LEON TOBRINER, Solicitor.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, October 2, 1883.**

In the matter of the Will and Codicil of Thomas J. Abbott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Webb and Daniel R. Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will and Codicil should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: 40-3 H. J. RAMSDELL, Register of Wills.

**THIS IS TO GIVE NOTICE,**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary E. Godey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of October, 1883.

EDWARD GODEY,  
 LEVIN T. CARTWRIGHT,  
 Administrators. 40-3

FRED. W. JONES, Solicitor.

**THIS IS TO GIVE NOTICE,**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Turnbull, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of October, 1883.

HENRY TURNBULL,  
 JEANNIE TURNBULL,  
 GORDON & GORDON, Solicitors. 40-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, October 1, 1883.**

In the matter of the Will of Catharine Gossler, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Jacob L. Gossler, of Brooklyn, N. Y.

All persons interested are hereby notified to appear in this court on Friday, the 19th day of October next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDELL, Register of Wills.  
 WORTHINGTON & HEALD, Solicitors. 40-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, Holding an Equity Court for said District.**  
**DANIEL MASON**

**RACHAEL MASON ET AL.** } In Equity No. 8558.

Eugene Carusi, trustee herein, having reported to the court, sale of part of lot No. 14, in square No. 238, (as described in the decree of sale), in the city of Washington, District of Columbia, to Henry C. Thorth, for \$2,610:

It is, this 4th day of October, A. D. 1883, ordered, by the court that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
 A true copy. Test: 40-3 R. J. Meigs, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JOHN R. REED ET AL.

Equity. No. 7962.

GEORGE W. REED ET AL.

George P. Goff, trustee in this cause, having reported the sale of the south 43 feet front, by the depth thereof of original lot 10, square 678, in the city of Washington, District of Columbia, to Mary Fuller, for the sum of \$2,100:

It is, this 24th day of September, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of October, next. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CATHERINE MILLER ET AL.

Equity. No. 8,574.

MARGARET WERLE ET AL.

The trustee in this cause having reported the sale of the real estate mentioned in these proceedings, viz: the western 17 feet and 9 inches front, by the depth of lot 10, in square 460, to Miss Frances Straub and Matthias Straub, for the sum of \$1,660.40; the 17 feet and 8 inches front by the depth of lot 10, in square 460, east of the western 17 feet and 9 inches to Charles P. Miller, for the sum of \$1,027.14; and the eastern 17 feet and 8 inches front by the depth of said lot 10, in said square 460, to Francis Miller, for the sum of \$947.94; and that the terms of sale have been complied with:

It is, this 25th day of September, A. D. 1883, ordered, that said sales be ratified unless cause to the contrary be shown on or before the twenty-seventh day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three weeks before the said 27th day of October next.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: R. J. MEIGS, Clerk.  
CHAS. A. WALTER, Sol'r. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Kirby, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.

ARTHUR B. OLAXTON, Executor. 39-3  
APFLEBY & EDMONSTON, Proctors.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Philadelphia, Penna., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Curtis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of September, 1883

LEVI CURTIS, Executor,  
468 n 6th st., Philadelphia, Pa.  
Or to G. W. BALLOCH

R. ROSS PERRY, Solicitor. 1006 F. st., city. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the case of Allan Rutherford, Administrator of John S. S. Maret, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 19th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39-3 H. J. RAMSDALL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 21, 1883.

In the matter of the Estate of Robert Swift, late of the Island of St. Thomas, in the Danish West Indies deceased. Application for Letters of Administration on the estate of the said deceased has this day been made by John St. C. Brookes.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published twice in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 40-2 H. J. RAMSDALL, Register of Wills.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of David P. Holloway, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

REUBEN F. BAKER, Administrator. 40-2  
EDWARDS & BARNARD, Solicitors.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of September, 1883.

DAVID FERGUSON

No. 8717. Eq. Doc. 23.

GUSTAVUS A. HENDERSON ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Gustavus A. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the matter of the Will of James T. Peake, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased has this day been made by John H. Peake and William C. Peake.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDALL, Register of Wills.  
WM. B. LORD, Solicitor. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

IN BANKRUPTCY.

In the Matter of THOMAS B. ENTWISLE and GEORGE O. BARRON, individually and as co-partners under the firm name of ENTWISLE & BARRON. Case No. 241.

Upon consideration of the report of James S. Edwards, assignee of Thomas B. Entwisle and George O. Barron, and of the firm of Entwisle & Barron, bankrupts, filed herein on the 16th day of September, 1883, submitting a proposition, or offer, on the part of the said Thomas B. Entwisle and Mary M., his wife, to compromise the suit brought against them by said assignee in this court, being Equity Cause No. 6462, upon the terms in said report mentioned:

It is this 16th day of September, A. D. 1883, ordered, adjudged and decreed, that the said compromise settlement be confirmed, on the terms stated in said report, on the 17th day of October next, unless cause to the contrary be shown on or before that date: Provided a copy of this order be published once a week for three successive weeks in the two newspapers known as the "Evening Star" and the "Washington Law Reporter," printed and published in the city of Washington, in the District aforesaid, before said last mentioned date.

By the Court. D. K. CARTER, Chief Justice.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William E. Schoenborn, late of the District of Columbia, dec'd. All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.  
**MARY A. SCHOENBORN,**  
 CHAS. A. WALTER, Solicitor. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah A. Keating, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of July, 1883.  
**JOHN F. ENNIS, Administrator,**  
 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of September, 1883.**

**AMER O. CRAWFORD** } No. 8707. Eq. Dec. 23  
 v.  
**WILLIAM CRAWFORD.**

On motion of the plaintiff, by Mr. John A. Clarke, her solicitor, it is ordered that the defendant, William Crawford, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. 38-3 Test: **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**EDWARD TEMPLE ET AL.** } Equity. No. 7767.  
 v.  
**CHARLES WORTHINGTON ET AL.**

Upon consideration of the report of Charles D. Fowler, trustee in this cause, of the sales of the following real estate, to wit: lot twenty-eight (28), in square one thousand (1000), to Richard T. Peult for \$25; lots three (3), five (5) and thirteen (13), in square six hundred and eight (608), for \$168.75; lot seven (7), in square six hundred and ten (610), for \$30; and lot ten (10), in square six hundred and ten (610), for \$40; to B. H. Warner; lot sixteen (16), in square six hundred and ten (610), for \$75; and the south one-half (1/2) of lot seventeen (17) in the same square, for \$27.50 to N. W. Burchell; lot eight (8), in square six hundred and eleven (611), for \$52.50 to William B. Webb; lot eight (8), in square six hundred and thirteen (613), for \$50; lot seventeen (17), in square six hundred and seventeen (617), for \$251; lot 3 (3), in square east of square six hundred and sixty-four (664), for \$40; lot four (4), in square south of square six hundred and sixty-seven (667), for \$80; lots nine (9) and ten (10), in square east of south of square six hundred and sixty-seven (667), for \$34 each lot; lots twenty two (22), twenty-three (23), twenty-six (26) and twenty-seven (27), in square south of square six hundred and forty-three (643), for \$200; lots three (3) and twenty-two (22), in square six hundred and forty-two (642), for \$124; lot eight (8), in square east of square six hundred and forty-two (642), for \$760; lot eight (8), in square seven hundred and eight (708), for \$50; lot six (6), in square eighty-eight (88), for \$51; and lot nineteen (19), in same square, for \$100; lot one (1), in square six hundred and nine (609), for \$75; lot five (5), in square six hundred and three (603), for \$65; and lot five (5), in square six hundred and sixty-two (662), for \$75, all to Augustus Burdort; and lot fifteen (15), in square eight hundred and seventy-eight (878), subject to all taxes, to B. H. Warner for \$100. And it appearing to the court that the order passed in this cause on the 30th day of July, A. D. 1883, conditionally ratifying these sales, has not been published as therein required, it is, by the court, this 17th day of September, A. D. 1883, ordered, that said sales and each of them be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of October, 1883: Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 17th day of October, A. D. 1883.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 38-3 **R. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 17th day of September, 1883.**

**JOHN A. PRESCOTT AND JAMES FRASER,** }  
 Trustees, }  
 v.  
**SEYMOUR RAY AND MELINDA J. RAY,** } No. 8708. Eq.  
 his wife, VINCENT RAY, SYLVESTER H. } Dec. 23.  
 RAY, AUGUSTUS F. RAY, LEWIS RAY  
 and FRANK R. RAY.

On motion of the plaintiffs, by Mr. Thos. H. Callan, their solicitor, it is ordered that the defendants, Seymour Ray and Melinda J. Ray, his wife, Vincent Ray, Sylvester W. Ray, Augustus F. Ray, Lewis Ray and Frank R. Ray, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 38-3 **R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Catharine Ragan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of September, 1883,  
**RICHARD F. HARVEY, 321 7th street, n. w.**  
**WM. H. DENNIS, Solicitor.** 38-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Weaver, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.  
**AUGUSTA M. WEAVER, Executrix.**  
 38-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia holding a Special Term for Orphans' Court Business. September 21, 1883.**

In the case of Wm. W. Birth and Brenton L. Baldwin, Executors of Caroline E. Birth, deceased, the Executors aforesaid have, with the approval of the court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares [or legacies] or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDALL, Register of Wills.**  
**A. B. DUVALL, Solicitor** 38-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 6th day of September, 1883.**

**ISABELLA DODSON** } No. 8,690. Eq. Dec. 23.  
 v.  
**JAMES H. DODSON.**

On motion of the plaintiff, by Mr. W. Preston Williamson, her solicitor, it is ordered that the defendant, James H. Dodson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 38-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 21st day of September, 1883.**

**MARY EUNICE CLARKE** } No. 8,711. Equity Docket 23.  
 v.  
**ANNA O'HARA ET AL.**

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Susan O'Hara, Virginia O'Hara, George E. O'Hara and Julia Eddy nee O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 True copy. 38-3 Test: **R. J. MEIGS, Clerk.**



# Washington Law Reporter

WASHINGTON - - - - - October 20, 1883

GEORGE B. CORKHILL - - - EDITOR

## From Paradise Down.

The Title to a Small Town Lot Traced Back to  
Adam and Eve.

The records of conveyancing in this country contain nothing more curious or interesting than the following document. Its genuineness cannot be questioned, as it is fully and formally attested over the signature and official seal of the recorder of Northumberland county, Penna., where the little patch of ground in question is located. This romantic document is remarkable for the wonderful accuracy with which the chain of title is traced from the original grant by "the Creator of the Earth," to "Parents of Mankind," and thence downward through the ages to the year 1793, when the thrifty widow of Mathias Joseph, "aliened, enfeoffed, released," etc., to Flavel Roan, esq.

All lawyers will agree that this deed was drawn by a master hand. Judged by the severe and technical rules of "ye olden time" it is perfect in both phraseology and form.

The lawyer who drew this curious deed lived in the town of Sunbury, Penna. He was an old book-worm, and a bachelor, and was noted for fine ability, great legal learning, methodical and punctilious accuracy in all matters of business, and for his seclusion from the social world of that day. It is said that he spent much of his time in a little house which he had securely fastened to the heavy branches of a large oak tree in the suburbs of the town. There, in his little nest, rocked by the winds, and cheered by the merry music of song birds, the old fellow was very happy. Tradition has it that he came to his death by accidentally falling out of his house.

The following is a verbatim copy of the introductory portion of the strange deed referred to, viz.:

## "DEED.

"CLARA HELENA ELLINKUYSEN  
Deed to  
FLAVEL ROAN, ESQUIRE." }

"This indenture made the ninth day of October, in the year of our Lord one thousand seven hundred and ninety-three, between Clara Helena Ellinkuyssen, of the town of Louisburg, in the township of Buffaloe, in the county of Northumberland, and Commonwealth of Pennsylvania, widow, of the one part, and Flavel Roan, of the town of Sunbury, in the county and Commonwealth aforesaid, esquire, of the other part.

"Whereas, the Creator of the earth, by parole, and livery of seisin, did enfeoff the parents of mankind, to wit, Adam and Eve, of all that certain tract of land called and known in the planetary system by the name of the earth, together with all and singular the advantages, woods, water, water courses, easements, liberties, privileges, and all others the appurtenances whatsoever thereunto belonging or in any wise appertaining, to have and to hold to them the said Adam and Eve and the heirs of their bodies lawfully to be begotten, in fee-tail general forever, as by the said feoffment recorded by Moses in the first chapter of the first book of his records, commonly called Genesis, more fully and at large appears on reference thereunto being had.

"And, whereas, the said Adam and Eve died seized of the premises aforesaid in fee-tail general, leaving issue, heirs of their bodies, to wit: sons and daughters, who entered into the same premises and became thereof seized as tenants in common, by virtue of the donation aforesaid, and multiplied their seed upon the earth.

"And, whereas, in process of time, the heirs of the said Adam and Eve, having become very numerous, and finding it to be inconvenient to remain in common as aforesaid, bethought themselves to make partition of the land and tenements aforesaid to and among themselves, and they did accordingly make such partition.

"And, whereas, by virtue of the said partition made by the heirs of the said Adam and Eve, all that certain tract of land called and known on the general plan of the said earth by the name of America, parcel of the said large tract was allotted and set over unto certain of the heirs aforesaid, to them and to their heirs general in fee-simple, who entered into the same and became thereof seized, as aforesaid, in their desmene as of fee, and peopled the same allotted lands in severalty, and made partition thereof to and amongst their descendants.



"And, whereas, afterwards (now deemed in time immemorial) a certain united people called, 'The Six Nations of North America,' heirs and descendants of the said grantees of America, became seized, and for a long time, whereof the memory of man runneth not to the contrary, have been seized in their demesne as of fee, of and in a certain tract of country and land in the north division of America called and known at present on the general plan of the said north division by the name of Pennsylvania.

"And, whereas, the said United Nations being so thereof seized, afterwards, to wit, in the year of our Lord one thousand seven hundred and sixty-eight, by their certain deed of feoffment, with livery of seizin, did grant, bargain, sell, release, enfeoff, alien and confirm unto Thomas Penn and Richard Penn, otherwise called The Proprietaries of Pennsylvania, (among other things) the country called Buffaloe valley, situate on the south side of the west branch of the river Susquehanna, parcel of the said country called Pennsylvania, to hold to them the said Proprietaries, their heirs and assigns, forever, in their demesne as of fee, as by the same feoffment more fully appears: which last mentioned tract of country was afterwards, with other tracts of country, by the said Proprietaries, by the advice and consent of their Great Council in General Assembly met, erected into a county called Northumberland aforesaid, of which the said Buffaloe valley was and is parcel by the name of Buffaloe township aforesaid.

"And, whereas, the said Proprietaries, by their letters-patent, bearing date the 11th day of August, in the year of our Lord one thousand seven hundred and seventy-two, did grant and confirm unto a certain Richard Peters, in fee simple, a certain parcel of the said township called Prescott, situate at the mouth of Spring run, adjoining and below the mouth of Buffaloe creek, on the south side of the west branch of Susquehanna aforesaid, in the township and county aforesaid, by metes and bounds in the said letters set forth, containing three hundred and twenty acres," etc.

And so the instrument goes on until, finally, from one owner to another, a certain parcel of the property, sixty-six feet front and one hundred and fifty-seven feet six inches in depth, falls to the possession of Clara Helena Ellinkuysen, the grantor in this extraordinary indenture.—*Washington Sunday Post.*

## Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

WILLIAM H. SPALDING ET AL.

vs.

ELISHA D. HALL ET AL.

LAW. No. 1309. Circuit Court.

Decided November 21, 1864.

1. A tenancy at will cannot arise in the District of Columbia without an express contract to that effect. Act of July 4, 1864.
2. Prior to July 4, 1864, where the tenant held over by consent, given either expressly or constructively, after the determination of a lease for years, this was a tenancy from year to year. In this District such tenancies, if they existed on the 4th of July, 1864, cannot be terminated by a notice of thirty days, but require a notice of six months to be given prior to the expiration of the yearly tenancy.
3. The language of the first section of the act of July 4, 1864, declaring "that the holding of lands or tenements by contract or lease, the terms of which have expired," &c., is to be construed as if it read, "the term of which has expired."
4. What would have been a tenancy from year to year before the passage of the act of July 4, 1864, must now "be deemed and held to be" a tenancy at sufferance, and may now be terminated by a notice, in writing, of thirty days, served upon the tenant.
5. All tenancies arising in the mode mentioned in the first section of the act, and continuing after its passage, can only be terminated in the manner prescribed by the law as it existed prior thereto, and when so terminated the landlord may proceed against the tenant to recover possession under the provisions of the second section of the act.
6. The tenancy at sufferance mentioned in the first section of the act of July 4, is "a holding by contract or lease, the terms of which have expired;" viz., a holding by the express or implied assent of the landlord, but the common law tenancy at sufferance is a holding over by wrong after the determination of the tenant's interest, that is to say, a holding in opposition to and in defiance of the will of the landlord. In the first case a thirty days' notice to quit is necessary before the tenant can be proceeded against under the second section of the act., but in the latter case proceedings may be instituted under that section at once and without notice; the meaning and intent being, that whenever the tenancy ends, if the tenant does not quit the premises, the landlord may institute forthwith and without notice, this summary proceeding to obtain possession.
7. The tenancy ends when the period for which the premises are leased expires. If the parties make no agreement as to the length of time for which the premises are leased, the tenancy may be ended by a notice of thirty days, if such tenancy was created subsequently to the 4th of July, 1864. If it was created before that time, and is still subsisting, it can be ended only in the manner prescribed by the law as it existed before the passage of the act.

8. This summary remedy to recover possession is extended to all persons who, by the act of the lessor or by operation of law, are placed in the same relation to the tenant as the original lessor, to wit, the grantees, assignees, devisees or heirs-at-law of the lessor.
9. Therefore, where A obtains from the owner of the premises a lease thereof, to commence at the expiration of B's tenancy, A cannot avail himself of the provisions of the act, to recover the possession from B, who holds over after the expiration of his tenancy.

#### STATEMENT OF THE CASE.

##### Appeal from a justice of the peace.

The defendants, Hall and Waters, were, as tenants of Mrs. Scott, in possession of a house in this city, for the unexpired term of a lease ending June 30, 1864. On the 16th of June of the same year, Mrs. Scott executed to Spalding & Rapley a five years lease to commence July 1. Hall & Waters received no notice to quit and continued to hold possession after the expiration of their term. Thereupon, on August 3, Spalding & Rapley instituted proceedings against them to obtain possession under the act of July 4, 1864, before a justice of the peace. Judgment for possession having been rendered against the defendants, an appeal was taken to this court.

WALTER S. COX for plaintiff.

BRADLEY & BRADLEY for defendants.

Mr. Justice OLIN delivered the opinion of the court:

The facts in this case involve the true construction and meaning of the first and second sections of the act entitled "An act to regulate proceedings in cases between landlord and tenant," passed July 4, 1864.

I will proceed to give briefly my construction of the statute. I am not insensible, I trust, to the vast importance of this statute to the people of this District, and that its provisions be clearly understood both by landlords and tenants, and thus enable them to act understandingly in reference to this subject.

The first section provides that after the passage of the act—that is, after the 4th of July, 1864, no tenancy at will shall arise or be created without an express contract to that effect. A tenant at will is "one who holds lands or tenements let to him by another at the will of the lessor." 2d Bl. Com., 145; 4th Kent Com., 110.

But this definition gives a very imperfect idea of the rights and obligations of a landlord and tenant, between whom a tenancy at will subsists. A tenancy at will arose in every case where one man leased lands or

tenements to another, and no fixed period of time was agreed upon at which the occupancy thereof should cease.

I cannot better explain the nature of such a tenancy than by quoting from the 4th volume of Kent's Commentaries, pp. 111, 112.

Speaking of estates at will, he says: "It was determined very anciently by the common law, and upon principles of justice and policy, that estates at will were equally at the will of both parties, and neither of them was permitted to exercise his pleasure in a wanton manner, and contrary to equity and good faith. The lessor could not determine the estate after he had sowed and before he had reaped, so as to prevent the necessary egress and regress to take away the implements. The possession of the land on which the crop is growing continues in the tenant until the time of taking it arrives. Nor could the tenant, before the period of payment of the rent arrived, determine the estate so as to cut off the landlord from his rent. Estates at will in the strict sense have become almost extinguished under the operation of judicial decisions. Lord Mansfield observed that an infinite quantity of land in England was holden without lease. They were all, therefore, in a technical sense, estates at will; but such estates are said to exist only notionally, and when no certain term is agreed on they are construed to be tenancies from year to year, and each party is bound to give reasonable notice of an intention to terminate the estates.

The language of the books now is, that a tenancy at will cannot now arise without express grant or contract, and that all general tenancies are constructively tenancies from year to year. If the tenant holds over by consent given either expressly or constructively, after the determination of a lease for years, it is held to be evidence of a new contract without any definite period, and is construed to be a tenancy from year to year. The moment the tenant is suffered by the landlord to enter on the possession of a new year, there is a tacit renovation of the contract for another year, and a half year's notice to quit must be given prior to the end of the term."

I have thus quoted at length this exposition of a tenancy at will, or, more properly, a tenancy from year to year, because practically we have no tenancies at will, strictly speaking, and because I find a vast amount of real estate is now held in this District by that tenure known as a tenancy from year to year. Such tenancies existing on the 4th of July last, cannot be terminated by a notice of thirty

days, but require a notice of six months to be given prior to the expiration of the yearly tenancy.

The first section further provides that an occupation, possession, or holding of any real estate without express contract or lease shall be deemed to be a tenancy by sufferance, and that the holding of lands or tenements by contract or lease the terms (it means term) of which have (has) expired shall be deemed and held to be a tenancy by or at sufferance.

We have thus two species of tenancies mentioned in this first section, one of which is described to be a tenancy at will, and the other it is declared shall be "deemed and held to be" a tenancy at sufferance; and those tenancies thus defined, arising in the way mentioned in this first section after the 4th of July, 1864, may be terminated or put an end to by a notice in writing of thirty days served upon the tenant, &c. All tenancies arising in the mode mentioned in this first section, and continuing after the 4th of July, 1864—that is, after the passage of the act in question—can only be terminated in the manner prescribed by the law as it existed prior to the passage of the act of July 4th, and when so terminated the landlord may proceed against the tenant to recover possession according to the provisions of the second section of the act.

I may remark here, that a tenancy arising or created in any of the modes mentioned in the first section of the act would not, in the absence of that act, be held either a tenancy at will or at sufferance, but simply a tenancy from year to year, and would have required a notice of six months to terminate it.

The argument has been ingeniously pressed upon the court, that because the act provides that a tenancy arising or created in the way mentioned therein, shall be deemed and held to be a tenancy at sufferance, which could only be terminated by a notice of thirty days, it followed that a tenant by sufferance, properly so known before the passage of this act, could not be proceeded against under the provisions of the second section without first having been served with a thirty days' notice to quit. Such a construction of this statute would nullify the plain and express provisions of the second section of the act, and deprive the statute of all its remedial character.

The only embarrassment in the construction of this first section arises in the use of the language, that where the holding is by contract or lease, the terms of which have expired, it shall be deemed and held to be a tenancy at sufferance. Now, prior to the passage of this act, a tenancy at sufferance arose, or was

created, in one way only. "A tenant at sufferance," says Blackstone, "is one that comes into the possession of land by lawful title, but holds over *by wrong* after the determination of his interest." (See 2 Bl. Com., 150; 4 Kent's Com., 116; Co. Litl., 57, b.) Such a tenant at common law had no estate in the premises he held, and was entitled to no notice to quit. The landlord might enter upon the premises and remove him and his goods therefrom, and no action of trespass could be maintained against him for so doing.

It will be seen at a glance, therefore, the distinction between the tenancy mentioned in the first section, and described as a "*holding by contract or lease, the terms of which have expired*," and a "*holding over by wrong after the determination of the tenant's interest*." The former, I think, means a holding over by the express or implied assent of the landlord, and would, in the absence of the present statute, constitute a tenancy from year to year. The latter is a mere wrongful holding in opposition to and in defiance of the will of the landlord. The difference between a holding over and a wrongful holding over is too manifest to require illustration.

This construction of the first section harmonizes the first and second sections, and makes each consistent with itself and with each other.

The second section proceeds to enact, in substance, that when a tenant holds possession without right, after the estate is determined by the terms of the lease by its own limitation, that is where, by the agreement of the parties, the tenancy is to end on a particular day, and the tenant hold over, the landlord may do what? Give notice? No. He may, on written complaint on oath to a justice of the peace, have a summons issued, &c. This section also provides that when the tenant holds over after his estate has been determined by a notice to quit or otherwise, the landlord may make complaint, &c. In other words, the manifest meaning and intent of the second section is, that whenever the tenancy ends, if the tenant does not quit the premises, the landlord may institute forthwith this summary proceeding before a justice of the peace to obtain possession. The tenancy ends with the period for which the premises are leased. If the parties make no agreement as to the length of time for which the premises are leased, the tenancy may be ended by a notice of thirty days, if such tenancy was created subsequently to the 4th of July, 1864. If it was created before that time, and is still subsisting, it can be ended only in the manner prescribed by the law as it existed before the passage of the act last mentioned.

One other question of some importance is raised in this case, as to what person or persons are entitled to resort to this summary proceeding to recover the possession of real estate. The first section uses the words "landlord and tenant," but the second section drops the word landlord and says, "on written complaint on oath of the *person entitled to the premises*," application may be made, &c. If this language be understood in its broadest acceptation, it would seem to imply that any one who had a legal title to the premises held by the tenant, might institute this summary proceeding to recover possession, whether that title was derived from the actual landlord or from some other source. Obviously, that cannot be the intent and meaning of this language; for, if so, it would at once subvert the common law action of ejectment, and substitute this summary proceeding in its place. The use of the words "*person entitled to the premises*," instead of the word "landlord," as in the first section, evinces an intention on the part of the legislature to extend this summary remedy beyond the actual lessor or landlord.

The true intent and meaning of the legislature was (I think) to extend this remedy to all persons who, by the act of the lessor or by operation of law, are placed in the same relations to the tenant as the original lessor, to wit, the grantees or assignees, devisees and heirs-at-law of the lessor.

If this construction of the statute be the true one, it follows that these complainants cannot institute this summary proceeding against the defendants in this case. They are not grantees, devisees, or heirs-at-law of the lessor of the premises in dispute. They certainly are not the landlords of these defendants. Before the expiration of the term of the tenants now holding over, the plaintiffs or complainants obtained from Mrs. Scott, the lessor of the defendants, a lease of the premises for the term of five years, to commence at the expiration of the defendant's tenancy. No relation, therefore, of landlord and tenant ever subsisted between these parties by express contract or by implication of law. This exposition of the statute will confine its provisions to what is its declared purpose, viz., to regulate proceedings in cases between landlord and tenant,

BROWN vs. BECKETT ET AL.

Equity. No. 583. Special Term.

Decided November 19, 1867.

1. The earnings of the wife, and whatever has been purchased with it, belong to the husband, and are liable for his debts.

2. The relation of husband and wife cannot exist between slaves, although they live together as such and children are born of their union; nor can their continued cohabitation after emancipation raise, as in other cases, a presumption of marriage.
3. Defendant claimed under a deed of settlement made by one trustee to another, both of whom were strangers to her, for her benefit; the deed was not signed by her, but in it she was described as the wife of B.  
*Held*, That she might claim under the deed without being estopped to deny that she was the wife of B.
4. In equity technical estoppels are not known, but proofs of that sort are considered as evidence, to be received if competent, and considered only for what they are worth.
5. In civil, equally as in criminal cases, where the question at issue is the existence of a marriage, the affirmative must be made out by the party who asserts it.

THE CASE is stated in the opinion.

R. P. JACKSON for complainant.

C. M. MATHEWS for defendants.

Mr. Justice WYLIE delivered the opinion of the court.

This is a creditor's bill by complainants to obtain a decree to set aside a deed by which the legal estate in two lots of land situated in Georgetown, was vested in Joshua Reiley in trust, for the use of Mary Beckett, the alleged wife of Clement Beckett, for her life, and after her death for her children, and for the sale of the said lots, on the ground that said deed to Reiley is fraudulent and void as against the creditors of Clement Beckett.

On the 10th of December, 1863, complainant obtained a judgment, in this court, against Clement Beckett, for \$552.96 with interest until paid, and \$35 costs, on a debt which had been incurred as long before as 1855.

Richard Cruit and A. B. Berry, other judgment creditors to the aggregate amount of about \$300, have also come in and proved their claims before the auditor.

The two lots in question were originally purchased in the name of Clement Beckett, and cost \$125, of which sum she paid \$50, and he \$75, and the deed was made to him.

Improvements were erected on the property, which greatly increased its value, but they were all paid for by her, from her own earnings; and there is strong evidence in the case that she not only clothed, fed and supported the children, but Clement himself who was and is an inefficient and thriftless person.

On the 16th of November, 1854, Clement conveyed the lots to Hugh Caperton, Esq., in trust to secure a debt of \$1,500, which he owed to the firm of Wheatley & Morrison, of Baltimore. This debt, to its last dollar, was

paid by Mary Beckett from the proceeds of her own earnings, with which, as she was able, she took up not less than twenty-two small notes, which Clement had given in evidence of the debt. All her small earnings were deposited by her with Mr. Orme, the agent of Wheatley & Morrison, and as these amounted to enough from time to time, she paid off the notes in their order, and we have them filed as proofs in the cause, showing how much may be accomplished by industry and frugality, even by a poor colored woman but recently emancipated from slavery.

The lots at this time, together with the improvements, were not worth anything like the amount of this debt. Having paid off the debt, however, a deed was made by Mr. Caperton conveying the lots to Joshua Reiley in trust for Mary Beckett, wife of Clement Beckett, as she is there called, for her life, with remainder to her children in fee. This deed is also executed by Wheatley and by Morrison, the late creditors, and by Clement Beckett himself, but not by her; nor was it necessary it should have been executed by her, and it is dated 17th of May, 1859.

It is this deed which the bill in this cause charges to be fraudulent and void, as against Clement Beckett's creditors, and asks to have set aside, that they may have the property sold as his property.

Since the date of this deed, she has made still further improvements upon the lots, consisting of two houses, proved to have cost from \$600 to \$800. Of this Clement paid not one cent. During the war she washed at the Seminary Hospital in Georgetown, and realized in this way from \$50 to \$100 a month. This is proved by the testimony of Mr. Cornell. She herself says, in her answer, that during the war, she made in this way the handsome amount of \$4,000 with which she was enabled to pay for these improvements besides supporting her family, Clement Beckett included. Still we are bound to decide, that however worthless the husband may be, all the earnings and the savings of the wife are his, and although with these she may have supported, fed and clothed him as well as herself and children, and bought property and built houses, they are his; and therefore liable for his debts; and if she has even paid off incumbrances upon the property to an amount exceeding its value, that will not save her, but the deed which proposes to secure it for her use, must be set aside as fraudulent and void, as against creditors whose claims were in existence at the date of its execution.

That, to be sure, is a kind of fraud on which even a court of equity must look with

allowance, whilst it is compelled to set aside the deed in obedience to a great public and general policy, which, upon the whole, tends to the suppression of fraud.

But in the present instance we are relieved from the necessity of inflicting individual wrong, as the price exacted for the preservation of this general policy. Mary Beckett, as she is called in these proceedings, was not the wife of Clement, and her earnings and property are therefore her own.

The evidence in the cause shows us that as early as 1836, they were both slaves, owned by different masters in Georgetown. They came together, and lived with each other as man and wife, and children were born to them. Yet they were not man and wife, for slavery was then the law of this District, and to that code the relation of husband and wife was a stranger.

On the 22d of August, 1838, Clement received emancipation from his master, Mr. Joshua Pierce, and on the 5th of June, 1844, Mary obtained her certificate of freedom from her master and friend, Mr. Jeremiah Orme. They continued to live together, after their emancipation, just as they had done before it. There is no evidence, in the case, that they were ever formally married. In such a case, as there was no possibility of marriage between them in their slavery, so their continued cohabitation, afterwards, can raise no presumption of that relation, as in other cases. The presumption, indeed, is quite otherwise. It is only a question of presumption in any case, and in this the presumption is met and rebutted by the facts which explain the nature of their relations to each other in the beginning, and which assumed no new character afterwards.

The "marriage license record," kept in the office of the clerk of the court, contains no evidence of any license ever having been taken out by these parties. The certificate made by the examiner by whom the evidence in this cause was taken down does state, that Mr. Jackson, the counsel for the claimants, produced before him what purported to be an extract from the marriage license record, showing that, under date of 9th December, 1846, the record of a license to marry was issued to these parties. But I have had that record itself brought before me, and have myself carefully examined it, and have failed to find any such record under that, or under any other date. It is true that under date of the 8th of December, 1846, there is the record of a marriage license issued to "William Beckett and Caroline Slater (Blks.)," but that will not do for the case of Clement Beckett and Mary

Slater. But complainants, for the purpose of creating, as they say, an estoppel against her on this point, have produced the deed of settlement already referred to, from Hugh Caperton to Joshua Pierce, in trust for Mary Beckett and her children, in which she is described as wife of Clement Beckett. But the deed was not signed or sealed by her, and is therefore not an admission of that fact on her part, although she claims the property under the deed. In equity technical estoppels are not known, but proofs of that sort are considered as evidence, to be received, if competent, and considered only for what they may be worth.

In the present instance the conveyance of the title was made by one trustee to another, who were both strangers to her, and for her benefit, because she had paid off the debt to Wheatley & Morrison, with her own money. She is described in the deed as Mary Beckett, wife of Clement. It is not her acknowledgment, but only a *descriptio personæ*, used by the grantor, which, if erroneous, may easily be accounted for, but ought not to have any influence as an admission to her prejudice. Besides, we must consider that she was an illiterate colored woman, recently a slave, and likely to have but little knowledge on the doctrine of estoppels, and caring only to have the home secured for herself and children, which she had paid for so laboriously.

Five depositions, and five only, have been taken in this case, and they all prove that Mary Beckett, as she is called, borrowed money, and gave notes in her own name; kept a money account with Mr. Orme in her own name; purchased property in her own name; built houses and rented them out in her own name; and in general, and in all respects, held herself out, in matters of business, as an unmarried woman, and was so treated and practically regarded by the world.

Finally, we have the solemn answer of the parties under oath, that they never were married subsequently to the acquisition of their freedom. If their marriage, prior to that event was impossible under the laws of slavery, their relation to each other was only that of concubinage, and its character has not been changed since, by any act of theirs.

Neither of them could maintain a suit for divorce from the other on account of any violation of the obligations of matrimony; and if either were now to marry, no indictment could be sustained for bigamy in such a case; not because merely that in such cases the law requires the marriage to be positively proved, but because in this case no marriage ever was contracted.

In civil, equally as in criminal cases, where the question for decision is the existence of a marriage, the affirmative must be made out by the party who asserts it. In both cases it is alike a question of evidence. *Consensus non concubitus facit nuptias*, and *concubitus* alone is often but slight evidence of a marriage, and may be met and overborne by other evidence, of which the present case furnishes a very strong illustration.

I speak not now of that class of cases, in which, to prevent the commission of fraud, a court of equity will hold a party to his representations, although they may be false in fact. For example, a man who has represented to the world that a particular person is his wife, will be bound to answer as husband for necessities furnished her as his wife, although she may not be such in fact. In such cases, however, it is not a question as to the fact of a marriage between the parties, but one of prevention of fraud attempted on the part of the ostensible husband.

The injustice threatened to be done to this poor woman, and her children by seizing on the fruits of long years of her labor, economy and thrift, and applying them, a second time, to the payment of the debts of a thriftless husband, whom she has herself fed and clothed and sheltered, because he was the father of her children, may, fortunately, be averted without the violation of any of the established rules of the law.

The bill is dismissed with costs.

United States Circuit, D. Alabama.

BRANCH vs. HAAS.

A contract for the sale and delivery of Confederate coupon bonds is illegal, and the courts will not entertain a suit to recover damages against a party for a failure to comply with the terms of such contract.

On demurrer to plea. The action is in damages for breach of contract of sale of two hundred bonds of the numerical value of \$200,000, which the plaintiffs allege they purchased of the defendant at the rate and price of four dollars per thousand, to be delivered to plaintiffs by the twenty-ninth day of October, 1881, which the defendants failed to do, to the damage of plaintiffs in \$1,500. The plea is the general issue, and a special plea to which the demurrer is directed, which alleges "that the contract sued on was based upon the sale by defendant for future delivery to plaintiffs of certain obligations commonly called Confederate coupon bonds, that were issued by a combination called the Southern States of America, in open and avowed renunciation of the authority of the government

of the United States, and for the express purpose of making war against and overthrowing the lawful government of the said United States. That said contract, which is the foundation of this suit, was an illegal transaction, opposed to public policy and void, and that the consideration of said contract is illegal under the principles of public policy, the Constitution of the United States, and the laws of Congress." To this plea a demurrer is interposed, and the question raised by the demurrer is whether the facts stated in the plea constitute a defense to the action.

BRUCE, J., in delivering the opinion of the court, said: The question is, can a contract for the purchase of Confederate coupon bonds and an undertaking to deliver them be enforced, or will the court entertain a suit to recover damages against a party for a failure to comply with the terms of a contract for such bonds or obligations?

That the bonds themselves are void there can be no question, for they were issued in violation of public policy, and by a pretended government asserting itself in hostility to the lawful government of the United States, which has long since ceased to have any actual existence, and never had any legal or rightful existence, as determined by the final arbitrament of war. The bonds in question, then are illegal and void by the Constitution of the United States. Fourteenth amendment, sec. 4. But it is said, and the argument is, that this suit is not brought upon the illegal and void bonds or obligations, but is brought upon a separate and independent contract, which is not tainted with the illegal character of the bonds for the sale and delivery of which the contract upon which suit is brought, was made.

True the suit is not upon the bonds, but it is on a contract for the sale and delivery of bonds, which bonds, by the Constitution of the United States, must be held illegal and void. What, then, is there to support the promise and undertaking of the defendant to sell and deliver the void bonds? The defendant, by the terms of the contract, was to receive four dollars per thousand for the bonds. He failed to deliver them according to his undertaking and promise, and to recover damages against him for this breach of his contract this suit is brought. If the defendant had delivered these void and illegal obligations and taken a note or other written obligation for the price, can it be maintained that the obligation would be good as a separate and independent contract, though the entire consideration for which it was given was illegal and void? In such a case the note might be said to be collateral to the illegal

obligation and one remove from it, so that it is not infected with the taint which inheres in the bond for which it was given; but how can a contract or obligation be separated from the consideration upon which it is made, and while a promissory note or written obligation is *prima facie* evidence of a good and valuable consideration, yet, if such consideration is in fact illegal, and shown to be so, the note cannot be enforced, for it is without consideration to support the promise. If it be correct, then, that the sale and delivery of the obligations in question could not support a promise to pay for them, it follows that the failure to deliver according to promise cannot raise any implied promise such as would support a suit for damages on account of such failure. This view of the subject is supported by the Supreme Court of the United States, in the cases of *Hanauer v. Doane*, 12 Wall., 343; *Hanauer v. Woodruff*, 15 Id., 439; *Sprott v. The United States*, 20 Id., 459.

ALABAMA CLAIMS.—The following judgments have been announced in the court of commissioners of Alabama claims: Case 1,770, Benjamin P. Sherman, \$92 with interest from January 20, 1865; William H. Foglar, administrator of estate of Augustus Lampher, deceased, \$80 with interest from July 17, 1863; case 1,115 Daniel Trowbridge, \$105 with interest from March 27, 1862.

AN OLD colored man was up for stealing a rooster from a neighbor. 'Why did you steal that chicken?' asked the Judge. 'Who say I stole um Jedge?' 'The owner.' 'He can't swah I took um.' 'No, but he says he saw the feathers in your back yard.' 'Dat's no sign, Jedge, when de win's been blowin like it has foh the las' few days,' 'Don't try to get out of it in that way, sir. I ask you now, didn't you steal that rooster?' 'De case, Jedge, am one of doubt. Now, ef you wuz advisin' a cullud man, would o' say it wuz wuss ter lie er ter steal?' 'I should say either was equally bad.' 'An' bofe, Jedge?' 'Well, both are no worse than the one. Sin is sin, according to the Divine law, and one offence is as bad as a dozen.' 'Is dat de truf, Jedge?' 'It certainly is.' 'Well, den, Jedge, I didn't steal dat rooster, an' I'se willing to swah it to.'

"I UNDERSTOOD you to say that your charge for services would be light," complained the client, when his lawyer handed him a tremendous bill. "I believe I said my fee would be nominal," was the reply; "but—" "O, I see!" interrupted the client; "phenomenal."

IT WAS on a western railroad. The conductor had been his rounds, and taken a seat beside a very quiet and unassuming passenger.

"Pretty full train," finally observed the passenger.

"Yes."

"Road seems to be doing a good business."

"Oh, the road makes plenty of money, but

"But what?" asked the passenger, as the other hesitated.

"Bad management. It is the worst managed line in this whole country."

"Is that so?"

"That's so. The board of officials might know how to run a side show to a circus, but they can't tackle a railroad."

"Who is the biggest fool in the lot?"

"Well, the superintendent is."

"I'm glad of that," said the passenger, as his face lighted up, I was afraid you would say it was the president."

"Suppose I had?"

"Why, I'm the man."

THE principal of an inland temple of learning saw fit to expel one of his boys, who then wrote home to his father in justification of his course: "I got expelled for riding with the girls, but I took the neatest, cleanest, prettiest girl there was in town."

## The Courts.

### U. S. Supreme Court Proceedings.

OCT. 15, 1883.

The following persons were admitted to practice:

Julian G. Dickinson, of Michigan; John G. Simrall, of Louisville, Ky.; E. F. Trabue, of Louisville, Ky.; George W. Merrill, of Eureka, Nev.; Charles W. Needham, and Frederic Ullman, of Chicago, Ill.; Aldis B. Browne, of Washington, D. C.; George B. Young, of St. Paul, Minn.

No. 204. The United States, plaintiff, v. James Hamilton. On certificate of division in opinion between the judges of the circuit court of the United States for the middle district of Tennessee. Dismissed for want of jurisdiction. Opinion by Mr. Justice Bradley.

No. 1. The United States, plaintiff, v. Murray Stanley. On certificate of division in opinion between the judges of the circuit court of the United States for the district of Kansas.

No. 3. The United States, plaintiff, v. Samuel Nichols. On certificate of division in opinion between the judges of the circuit court of the United States for the western district of Missouri.

No. 26. The United States, plaintiff, v. Samuel D. Singleton. On certificate of division in opinion between the judges of the circuit court of the United States for the southern district of New York.

No. 2. The United States, plaintiff in error, v.

Michael Ryan. In error to the circuit court of the United States for the district of California.

No. 28. Richard A. Robinson et ux., plaintiffs in error, v. The Memphis & Charleston Railroad Company. In error to the circuit court of the United States for the western district of Tennessee. Judgment in No. 2 affirmed, and No. 28 affirmed with costs. Opinion by Mr. Justice Bradley; dissenting, Mr. Justice Harlan.

No. 203. The United States, plaintiff, v. Edward T. Gale et al. On certificate of division in opinion between the judges of the circuit court of the United States for the northern district of Florida.

No. 892. A. U. Wyman, treasurer of the United States, plaintiff in error, v. the United States, ex rel. E. P. Halstead, administrator, etc. Motion granted, and case assigned for argument on first Monday in November, at the foot of the call.

No. 879. Lazarus Scharf et al., plaintiffs in error, v. James and Albert Levy. Motion to advance granted.

No. 970. A. Austin Smith, plaintiff in error, v. Samuel C. Greenhow. Motion to advance granted.

No. 672. H. G. C. Paulsen, appellant, v. the Chesapeake & Ohio Railway Co. et al.

No. 1047. Gottfried Bachmann, appellant, v. the Chesapeake & Ohio Railway Co. et al.

No. 969. Thomas Polindexter, plaintiff in error, v. Samuel C. Greenhow, treasurer, etc.

No. 971. William L. White, plaintiff in error, v. Samuel C. Greenhow; and

No. 972. Samuel S. Carter, plaintiff in error, v. Samuel C. Greenhow. Motions to advance denied.

No. 9. Augustus J. Julliard, plaintiff in error, v. Thomas S. Greenman. Motion to amend pleadings denied.

No. 601. James S. Philippe, appellant, v. Antonio Philippe et al. Motion to dismiss submitted.

No. 1148. Robert C. Hewett, appellant, v. Lewis T. Filbert et al. Appeal from Supreme Court of District of Columbia. Docketed and dismissed with costs.

No. 949. J. N. Evans, plaintiff in error, v. Samuel Brown. Motions to dismiss or affirm submitted.

No. 1118. The Winthrop Iron Co. et al., appellants, v. Arthur B. Meeker et al. Motion to dismiss submitted.

No. 7. Original ex parte. In the matter of the Commonwealth of Pennsylvania, petitioner. Argued by Mr. H. G. Ward and Mr. M. P. Henry for the petitioner. Court did not desire to hear counsel for respondent.

No. 45. The Indiana Southern Railroad Co., appellant, v. the Liverpool and London and Globe Ins. Co.

No. 46. William H. Guion, appellant, v. the Liverpool and London and Globe Ins. Co. Submitted.

No. 47. C. A. Arthur, collector, etc., plaintiff in error, v. Henry Pastor et al. Argued.

No. 48. Bernard Arnson et al., plaintiffs in error, v. Thomas Murphy, collector. Argued.

OCT. 16, 1883.

The following persons were admitted to practice:

George K. Newcombe, of Manistique, Mich.; John W. Butterfield, and Charles H. Joyce, of Washington, D. C.

No. 49. Frank D. Yates, appellant, v. the United States. Dismissed.



No. 50. H. B. Claflin & Co., plaintiffs in error, v. the Commonwealth Insurance Co. of Boston.

No. 51. H. B. Claflin & Co., plaintiffs in error, v. the Western Assurance Co. of Toronto, Canada.

No. 52. H. B. Claflin & Co., plaintiffs in error, v. the Franklin Insurance Co. of St. Louis, Mo. Argued.

No. 54. Matthew F. Johnson, executor, etc., et al., appellants, v. Stephenson Waters, administrator, etc. Argument commenced.

OCT. 17, 1883.

The following persons were admitted to practice:

Marshall J. Williams, of Washington Courthouse, Ohio; William A. Underwood, of Adrian, Mich.; Winchester Britton, of Brooklyn, N. Y.; C. W. Wells, of Pottsville, Pa.; Alfred Ely, of New York city.

No. 1161. William H. Campbell et al., appellants, v. Michael A. French. Appeal from the Supreme Court of the District of Columbia. Docketed and dismissed with costs.

No. 59. The Kellogg Bridge Co., plaintiff in error, v. Thomas H. Hamilton. Passed. To be submitted on printed argument on or before the 31st instant.

No. 174. Elijah Stanton, appellant, v. Ephraim S. Johnson; and

No. 212. Ephraim S. Johnson, appellant, v. Elijah Stanton. On stipulation of counsel, dismissed, each party to pay costs of his appeal in this court.

No. 54. Matthew F. Johnson, executor, etc., et al., appellants, v. Stephenson Waters, administrator, etc. Argued.

No. 55. Samuel H. Ruggles, appellant, v. N. J. Turnly, trustee, etc. Passed.

No. 56. John W. Irwin, plaintiff in error, v. George P. and H. D. Williard. Argument commenced.

OCT. 18, 1883.

No. 56. John W. Irwin, plaintiff in error, v. George P. and H. D. Williard. Argument concluded.

No. 58. Salmon S. Matthews, plaintiff in error, v. Thaddeus Densmore et al. Submitted.

No. 997. The Board of Liquidation of the City Debt, appellants, v. the Louisville & Nashville Railroad Co. et al. Argued.

OCT. 19, 1883.

Dighton Corson, of Deadwood, Dakota, and Earnest B. Kruttschnitt, of New Orleans, Louisiana, were admitted to practice.

No. 997. The Board of Liquidation of the city Debt, appellants, v. the Louisville and Nashville Railroad Co. et al. Argued.

No. 60. William R. Grace et al., plaintiffs in error, v. the American Central Ins. Co. of St. Louis, Mo. Argued.

No. 61. Henry F. Williams et al., plaintiffs in error, v. the United States. Passed.

No. 62. Joseph T. Thomas, trustee, &c., appellants, v. the Brownville, Fort Kearney & Pacific Railroad Co. et al. Submitted.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

OCT. 15, 1883.

Lemont v. Washington & Georgetown Railroad Co. Opinion by Justice Cox reversing judgment below.

United States, ex rel. W. W. Warden, v. Secretary of the Navy. Application for mandamus refused. Appeal noted.

United States, ex rel. Lipscomb, v. Secretary of State. Time to show cause extended.

Herr v. Barber. Argued and submitted.

OCT. 16, 1883.

Williams v. Williams. Bill dismissed.

Keyser, receiver, v. Hitz. Hearing commenced.

OCT. 17, 1883.

Keyser, receiver, v. Hitz. On hearing.

OCT. 18, 1883.

Keyser, receiver, v. Hitz. On hearing.

OCT. 19, 1883.

O'Donnoghue v. Dale et al. Ordered to the

General Term to be heard in the first instance.

Keyser, receiver, v. Hitz. On hearing.

OCT. 20, 1883.

Murray v. Fletcher. Leave given to withdraw books and file vouchers from the files.

Sandy v. Secretary of the Interior et al. Default of defendants entered and proceedings *ex parte* allowed.

Bickford v. Bibkford. Twenty days allowed to take further testimony.

U. S. v. John W. Coomes. Receiving stolen property, &c., (three cases).

U. S. v. Charles E. Flinder and George W. McElfresh. Receiving stolen property.

#### CIRCUIT COURT.—Justice Mac Arthur.

OCT. 15, 1883.

Bailey v. Moses. Death of the plaintiff suggested.

Taylor v. Cudmore. Stipulation to abate suit and for costs.

Schureman v. Zurhorst. Ordered on appeal docket.

Cotharin v. Strasbarger. Death of defendant suggested.

United States v. Gibbs. Judgment by default.

Dixon & Bro. v. Mahoney. Judgment by default.

Stewart v. Lewis Johnson & Co. Judgment of condemnation against garnishee.

OCT. 16, 1883.

Evans v. Wilson. Judgment below affirmed.

Green v. Colley. Judgment by default.

Kohn et al. v. Kaufman. Judgment by default.

Cooke v. West. Death of plaintiff suggested and suit abated.

Reichenbach v. Hampton et al. Order permitting counsel to withdraw.

Galt & Co. v. Second National Bank (two cases).

Judgment of condemnation.

Knox v. Wheeler. Off docket.

Gummel v. Revalls. Defendant called and judgment.

Batters v. Smith. Attachment dismissed and case remanded to justice of the peace.

Alexander v. Barnes. Defendant called and judgment.

Plews v. Snelbaker. Suit dismissed.

Walter v. Carter. Verdict for plaintiff for \$25.

Wyndham v. Buchanan. Verdict for defendant.

Waggaman v. Smith. Suit dismissed.

Forbenson v. Clark. Same.

Hoagland v. Utermehle. Same.

OCT. 17, 1883.

Foley v. Rady. Judgment confessed.

Leary v. Mead. Verdict for defendant.  
Ruffin & Co. v. Shannabrook. Judgment below affirmed.

Quinter Bros. v. Miller. Suit discontinued by plaintiff.

Dauphin v. Gresham. Order for commissioner to take testimony.

Henning v. Cromptey. Verdict for plaintiff.

Allen v. Baltimore & Ohio Railroad Co. Plaintiff called and suit dismissed.

Winans v. Goodall. Suit discontinued.

Godey v. Conradis. Death of plaintiff suggested and administrator made party.

Glick v. Northern Liberty Market Co. Leave to amend.

Barbour & Hamilton v. Cahill & Co. Verdict for plaintiff.

Smith v. Earl. Judgment confessed.

McIntire v. Fant. Judgment by agreement.

Johnson v. Stierlin. On trial.

OCT. 18, 1883.

Johnson v. Stierlin. Verdict for defendant.

Mitchell v. Lincoln. Judgment by default.

Brien v. District of Columbia. Judgment by agreement; \$40 without costs.

Butt v. Solomon. Plaintiff called and suit dismissed.

Waggaman v. Bartlett. Judgment for defendant.

De Ghent v. Chase. Verdict for plaintiff for \$100.

Anderson v. Strauss. Plaintiff called and suit dismissed.

Carson v. Cromptey. Same.

Nash v. Coleman. Death of plaintiff suggested.

Johnson et al. v. Slyer. Dismissed.

Parder v. Stewart. Verdict for plaintiff.

OCT. 19, 1883.

Smith v. Balloch. Judgment by default.

Malsby v. Barker. Verdict for possession and \$154.67 rent.

Cullinane v. Blumenburg. Death of defendant suggested.

Birch v. Blumenburg. Same.

Fague v. Heine. Verdict for plaintiff for \$93.99.

Utermehle v. Richold. Suit dismissed.

Lang v. Gray. Verdict for plaintiff.

McAvoy v. Washington Gaslight Co. Verdict for plaintiff for \$375.

Elliot v. Barbour. Verdict for plaintiff for \$100.

#### EQUITY COURT.—Justice Cox.

OCT. 15, 1883.

Starr v. Treacle. Leave granted to amend answer.

Barber v. Gilmore. Forty days allowed to take testimony under amended bill.

Richards v. Richards. Divorce granted.

O'Donoghue v. Dale. Hearing ordered in the General Term in the first instance.

Elliot v. Callan. Demurrer sustained with leave to amend.

Bowman v. Bowman. Appearance of absent defendant ordered.

Frazier v. Fague. Trustee authorized to execute deed of release.

Butler v. Scott. Sale ratified and receiver discharged.

McCarthy v. O'Brien. Sale ordered and J. F. Hanna appointed trustee to sell.

Colley v. Green. Restraining order discharged; injunction denied and leave granted to amend.

Stansbury v. Inglehart. Demurrer sustained and bill dismissed.

OCT. 16, 1883.

National Savings Bank of District of Columbia v. Samuel Adams. Referred to auditor to state account.

OCT. 18, 1883.

Marshall v. Marshall. Reference to the auditor to state trustee's account.

Pitts v. Pitts. Appearance of absent defendant ordered.

Alexander v. Duffy. Leave granted to amend bill.

Killian v. Killian. Sale ratified nisl.

King v. Sweet. Time to answer restraining order extended to October 22.

Craig v. Craig. Allowance of counsel fees ordered.

McNamara v. Boswell. Order appointing Charles H. Forker trustee to make release.

Jackson v. Blackwood. Rule on E. J. Sweet returnable October 25.

Keyes v. Keyes. Testimony ordered taken before examiner Jno. Cruikshank.

Beall v. Seoggs. Exceptions overruled and auditor's report confirmed.

Taylor v. Taylor. Bill dismissed.

Mills v. Mills. Pro confesso and reference ordered.

Best v. Best. Reference to the auditor.

OCT. 19, 1883.

Power v. Walsh. Rule granted on B. H. Warner returnable October 25.

Killian v. Killian. Reference to the auditor ordered.

White v. White. Same.

Gordon v. Fant. Order directing William A. Gordon to pay out certain money.

Willard v. Willard. Report of commissioner overruled and sale ordered.

Butler v. Butler. Motion for leave to amend overruled.

#### CRIMINAL COURT.—Justice Wylie.

OCT. 15, 1883.

Wm. Sweeny. Plea of guilty.

George Northridge and William Byron. House breaking, arraigned and plea of not guilty.

Henry Richardson. Petit larceny (four cases), recognizance forfeited.

Sophia Wanzer alias Kate White. Assault, recognizance forfeited.

William Horan. Assault, recognizance forfeited.

Julius Eppard. Assault, plea in abatement and demurrer; the demurrer sustained.

Francis R. Callahan. Embezzling money from letters; surrendered by his surety.

OCT. 16, 1883.

United States v. John Hitz and C. E. Prentiss. Stipulation between counsel and trial fixed for November 20.

United States v. B. F. Bigelow. Bill of particulars and consolidation of cases ordered; trial set for October 29.

OCT. 17, 1883.

Thomas Dunn and Robert Murphy; larceny; on trial.

OCT. 18, 1883.

Thomas Dunn and Robert Murphy; grand larceny; on trial.

OCT. 19, 1883.

Thomas Dunn and Robert Murphy; larceny; guilty; notice for a motion for a new trial.

Thomas Dunn, convicted of larceny; motion for a new trial filed.

William Horan; assault on William Edwards; not guilty.

James Johnson; house-breaking in night; guilty; sentenced to one year in the penitentiary.

Julius Eppard; assault on Elizabeth Stokes; not guilty.

**CIRCUIT COURT.—New Suits at Law.**

OCT. 15, 1883.

24821. Martin Kratt v. Davit N. Fett. Certiorari. Defts atty, D. E. Cahill.

24822. Timothy D. Daly v. James A. Gibbs et al. Judgment of Justice Bundy, \$75. Pliffs atty H. W. Garrett.

24823. Brigham & Hopkins v. Benedict F. Harvey. Judgment of Justice Wilson, \$100. Pliffs atty, H. W. Garrett.

24824. Francis O. Cole & Co. v. Benedict F. Harvey. Judgment of Justice. Pliffs atty, H. W. Garrett.

24825. Mason Shipman v. John J. Shipman. Appeal. Pliffs atty, S. T. Drury.

24826. George Morston v. Maurice E. Shipley. Account, \$170.60. Pliffs attys, Webb and McKenney.

OCT. 16, 1883.

24827. Thomas E. Waggaman v. John H. Shelton. Appeal. Defts atty, Thos. F. Miller.

24828. Charles Held v. Henry Nan. Appeal. Defts atty, Thos. F. Miller.

24829. Warwick Evans v. Thomas Wilson. Appeal. Pliffs atty, E. A. Newman.

24830. Zody Strashburger v. E. Fitzgerald et al. Note, \$500. Pliffs atty, W. J. Newton.

24831. John Fitzmorris v. David Nelligan. Account, \$200.67. Pliffs atty, W. J. Newton.

24832. James Coulon et al. v. William Acker. Damages, \$5,000. Pliffs atty, F. T. Browning.

24833. William A. Killman v. Cassimer Bohn. Judgment of Justice Helmick, \$75.

24834. The Conn. Gen. Life Ins. Co. v. Lawrence E. Gannon. Account, \$125. Pliffs atty, S. R. Bond.

24835. Edwin Muller v. District of Columbia. Damages, \$10,000. Pliffs atty, W. F. Mattingly.

24836. Nathan W. Fitzgerald v. Henry V. Boynton et al. Libel, \$100,000. Pliffs atty, E. W. Grant.

24837. Same v. Charles T. Murray et al. Libel, \$50,000. Pliffs atty, E. W. Grant.

OCT. 17, 1883.

24838. Amelia J. Parrington et al. v. William W. Danen bower et al. Pliffs attys, Ridole Davis & Padgett.

24839. Abbie E. Thayer v. Charles C. Duncanson. Damages, \$1,000. Pliffs atty, A. G. Riddle.

24840. Leon Solomon v. Edward Eunright. Account, \$199. Pliffs atty, N. H. Miller.

24841. Herman Hollander v. Augustus Beck. Note, \$109.23. Pliffs atty, N. H. Miller.

24842. R. D. Ruffin & Co. v. Francis Shannabrook. Appeal. Defts atty, F. T. Browning.

24843. Richard McAllister et al. v. Caroline Williams, administratrix, et al. Account, \$5,621.50. Pliffs attys, Harris & Oliver.

24844. Samuel C. Mills et al. v. District of Columbia. Damages, \$4,000. Pliffs atty, J. J. Darlington.

24845. Rosenberg Manufacturing Co. v. Louis Kaufman. Account, \$233.25. Pliffs atty, N. H. Miller.

OCT. 18, 1883.

24846. Allen C. Clark v. Francis Leonard. Ejectment. Pliffs atty, D'O. O. Callaghan.

24847. Charles W. Schlitzberger v. William Ryan. Appeal. Defts atty, D. E. Cahill.

24848. The Immaculate Conception Female School v. Thomas Barry. Certiorari. Defts atty, W. J. Newton.

24849. R. B. Lloyd et al. v. Patrick Regan. Judgment of Justice Helmick, \$70.

OCT. 19, 1883.

24850. Caroline Williams, administratrix, v. Minnie Bagaley. Damages, \$10,000. Pliffs attys, Miller and Webb.

**IN EQUITY.—New Suits.**

OCT. 15, 1883.

8743. Ida S. Bowman v. Columbus S. Bowman. For divorce. Com. sol., W. C. Stone.

8744. Samuel O. McDowell v. Sarah M. Starr et al. For conveyance. Com. sol., James W. Greer.

OCT. 16, 1883.

8745. Margaret Kenney v. Richard Morgan et al. To get defendants' endorsement of check. Com. sols., Gordon & Gordon.

OCT. 17, 1883.

8746. Elizabeth B. Hutchins v. Francis J. Hutchins et al. For specific performance. Pliffs attys, Miller & Carusi.

8747. Ada E. King v. Rosella M. Simms et al. For acct., partition and sale. Com. sol., George E. King.

8748. Almarin C. Richards et al. v. Abraham Herr et al. For injunction. Com. sols., Cole and Richards.

OCT. 18, 1883.

8749. Grace A. Falk v. Louis Falk et al. To enforce payment of alimony. Com. sol., Robert M. Newton.

8750. Emma E. Miller v. John Miller. For divorce. Com. sols., Birney & Birney.

OCT. 19, 1883.

8751. Norah S. Benjamin v. Samuel C. Benjamin. For divorce. Com. sols., Hancock, Hay and Griswold.

8752. The Potomac Steamboat Company v. Richard H. W. Reed et al. To declare \$435.45 in hands of defendants. Com. sols., Edwards & Barnard.

OCT. 20, 1883.

8753. Thomas Kirby et al. v. Robert S. Chew et al. To substitute trustee. Com. sol., F. W. Jones.

8754. Amos W. G. Birney et al. v. Marianne H. Birney et al. Partition and to declare a trust. Com. sol., F. W. Jones.

**PROBATE COURT.—Justice James.**

OCT. 20, 1883.

Estate of Patrick Corcoran; order appointing Sally Shea administrator on bond of \$3,000.

Estate of L. Dickinson; order directing administrator to turn over certain stock.

In re Thomas Ryan, minor; order appointing Catharine Cammack guardian on bond of \$1,500.

Will of Catharine A. McMillan; filed for probate and record.

Estate of James W. Frere; John J. Johnson appointed administrator on bond of \$5,000.

Estate of Harrison Mayse; order appointing William Mayse guardian of two orphan children on bond of \$3,000.

Estate of Virginia Taylor; order dismissing petition of William Taylor Lewis without prejudice.

Estate of Catherine Wagner; will proved by one witness.

Estate of Mary Wilson; order of sale.

Estate of Bennett Lee; order of sale.

Estate of Catherine Gossler; will partially proven.

Estate of John H. Tucker; will fully proved and admitted to probate and letters directed to issue to A. D. Tucker and W. S. Thompson, on bond of \$500.

Estate of Elijah Kingman; order directing executors to refer to arbitration the claim of Dr. N. S. Lincoln.

Estate of Thos. Turvey; will filed and partially proven.

Estate of Susan V. Walker; citations against administrator ordered to issue.

Estate of Dennis O'Sullivan; will admitted to probate and letters testamentary issued.

Estate of John S. S. Morett; first and final account of administrator passed.

**Legal Notices.****THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elizabeth S. Rogers, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of September, 1883.

IRVING WILLIAMSON, Solicitor. JAMES K. ROGERS.

43.3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. October 15, 1883.**

In the matter of the Will of Frances E. Berry, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary A. S. Cary.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of November next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court, CHARLES P. JAMES, Justice.

Test; H. J. RAMSDALL, Register of Wills.

JAMES H. SMITH, Solicitor. 43.3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 18th day of October, 1883.**

**MARY M. KILLIAM** } No. 8,632. Equity Docket 23.  
v.  
**JOHN KILLIAN ET AL.**

Ordered, that the sale made and this day reported by Reginald Fendall, trustee herein, be ratified and confirmed unless cause to the contrary appear on or before the 19th day of November, next. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

The report states that the property sold for \$10,775.  
By the Court. W. S. COX, Justice.  
A true copy. Test: 42-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 16th day of October, 1883.**

**IDA S. BOWMAN** } No. — Eq. Doc. 23.  
v.  
**COLUMBUS S. BOWMAN.**

On motion of the plaintiff, by Mr. Warren C. Stone, her solicitor, it is ordered that the defendant, Columbus S. Bowman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: E. J. MEIGS, Clerk.  
WARREN C. STONE, Solicitor. 42-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of October, 1883.**

**FRANK M. PITTS** } No. 8,623. Equity Docket 23.  
v.  
**JENNIE S. PITTS.**

On motion of the plaintiff, by Mr. Wm. T. S. Curtis, his solicitor, it is ordered that the defendant, Jennie S. Pitts, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. W. S. COX, Justice.  
True copy. 42-3 Test: R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Smith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of October, 1883.  
MARY J. SMITH, Executrix.  
JAS. G. PAYNE, Solicitor. 42-3

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business' Letters Testamentary on the personal estate of Robert Campbell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1883  
SARAH CAMPBELL, Executrix.  
S. T. THOMAS, Solicitor. 42-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**RICHARD MARSHALL, Guardian of** }  
**Abraham P. Marshall, Plaintiff** } Equity. No. 8291.  
v.  
**ABRAHAM P. MARSHALL ET AL.,** }  
**Defendants.**

Upon consideration of the report of Job Barnard and James H. Smith, trustees, of the sale of lot No. 62, square 367, to Frank T. Browning, for the sum of \$2,277 60. It is, this 10th day of October, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 12th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 12th day of November, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 41-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**CHARLES H. ARMES, Administrator of** }  
**Emory W. Du Bose, deceased, com-** } No. 8,734.  
**plainant,** } Equity Docket 23.  
v.  
**THOMAS C. DU BOSE ET AL., defend-** }  
**ants.**

On motion of the complainant, it is this eighth day of October, 1883, ordered, that the defendants, Thos. C. Du Bose, William H. B. Du Bose, Hester S. Huggins, Robert J. Huggins, Drucilla C. P. Hallford, J. G. Hallford, Wylie Skinner, C. S. Skinner, A. F. Skinner, N. E. Skinner, H. B. Skinner, W. M. Skinner, Martha J. Beasley, E. E. Galloway, and —Galloway, her husband, J. H. Beasley, T. S. Du Bose, R. E. B. Du Bose, J. L. R. Du Bose, E. M. L. Du Bose, Oscar Beverley Du Bose, Lucius Bellingier Du Bose, Myer Middleton Du Bose, William Perry Du Bose, Laurence J. Stokes, Elliott E. Stokes, Emiline L. Waits, Mary H. Paschall, T. R. Waits, W. V. Paschall, Albert Jordan, and —Jordan, his wife, W. W. Thompson, and —Thompson, his wife, and Frank H. Du Bose, cause their appearance to be entered in this cause on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true Copy. Test: R. J. MEIGS, Clerk.  
By M. A. CLANCY Asst. Clerk. 41-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**HORACE H. BROWER ET AL.** } No. 8,514. Eq. Doc. 23.  
v.  
**MARGARETHA HERTH.**

This cause coming on again to be heard upon the papers heretofore filed and also upon the trustee's report filed, and having been duly considered, now on motion of P. B. Stillson, plaintiff's attorney, it is, this 11th day of October, A. D. 1883, ordered, adjudged and decreed, that the sale of lots 10 and 11, in square 99, made by said trustees, in pursuance of two decrees passed on the 4th and 12th of September, 1883, which property is more particularly described in the bill in said cause, be and the same is ratified and confirmed unless cause be shown to the contrary on or before the 13th day of November, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of November, next.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true Copy. Test: 41-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 12th day of October, 1883.**

**LOUISA F. MITCHELL** } No. 8735. Eq. Doc. 23.  
v.  
**JEROME R. WROE ET AL.**

On motion of the plaintiff, by Mr. Irving Williamson, her solicitor, it is ordered that the defendants, Jerome R. Wroe, Joseph Shields Wilson, Calvin Gurley Wilson, David Russell Wilson and Martha Ella Murray, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice,  
A true copy. Test: 41-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.**

**ABIGAIL M. McDERMOTT ET AL.** } No. 1195. Eq. Doc. 8.  
v.  
**JEANNIE A. McDERMOTT ET AL.**

William R. Webb, the trustee appointed in this cause, having reported to the court that in pursuance of its decree he made sale of lots numbered one (1), two (2), three (3), four (4), five (5) and twenty four (24), in square numbered six hundred and twenty-one (621), to Thomas E. Waggaman, at and for the price and sum of sixteen cents per square foot, the whole purchase money being \$9,140.16, that the said purchaser has assumed the payment of the taxes in arrears and unpaid upon the said lots and has paid or secured to be paid the balance of said purchase money: It is, by the court, this 10th day of October, 1883, ordered, that the sale be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the 12th day of November, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 12th day of November, 1883.

By the Court. CHAS. P. JAMES, Justice,  
A true Copy. Test: 41-3 R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 12th day of October, 1883.**

MARTIN V. B. HOFFMAN ET AL. } No. 5625. Eq. Doc. 23.

LAWRENCE GALLAN ET AL. }  
Ordered, that the sale made and reported October 11, 1883, by Benjamin F. Leighton, trustee for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of November next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter. The report states that the lot described in complainant's bill sold for \$1,010:

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: 41-3 R. J. Meigs, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hermann H. Diebitsch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1883.

MAGDALENE DIEBITSCH, Executrix.  
WM. R. WOODWARD, Solicitor. 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Magee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of September next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

LAURA MAGEE, Executrix.  
LEON TOBRINER, Solicitor. 41-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Allyn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of October, 1883.

W. H. H. SMITH,  
MARIA B. SMITH,  
Executors.  
CHAPIN BROWN, Solicitor. 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary Jeffrey Field, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1883.

RICHARD CROWTHER, Executor.  
J. J. JOHNSON, Solicitor. 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Adams, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of October, 1883.

BENJAMIN F. SNYDER, Executor.  
B. ROSS PERRY, Solicitor. 41-3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 11th day of October, 1883.**

ELIZABETH G. BANGS } No. 5736. Eq. Doc. 23.

CATHARINE C. GIDEON ET AL. }  
On motion of the plaintiff, by Mr. John E. Latimer, her solicitor, it is ordered that the defendants, Robert A. Drake, Horace T. Love and Sarah E. Love, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 41-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of October, 1883.**

THE UNITED STATES OF AMERICA } No. 5723. Eq. Doc. 23.

JOHN SHEA ET AL. }  
On motion of the plaintiff, by Mr. George B. Corkhill, its solicitor, it is ordered that the defendant Ambrose B. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 41-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

JOHN J. LIGHTFOOT } Equity. No. 5065.

WILLIAM BRITT ET AL. }  
Ordered, that the sales made and this day reported by John J. Lightfoot and L. Cabell Williamson, trustees, be ratified and confirmed unless cause to the contrary be shown on or before the 5th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before the said 5th day of November, 1883. The report states that lots 2, 3 and 4, being a portion of "Part of the Vale" sold for \$35 per acre each in cash.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 41-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, October 12, 1883.**

In the case of Reginald Fendall, Administrator of James O. Vermillion, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDALL, Register of Wills.  
JAMES H. SAVILLE, Solicitor. 41-3

**CHANCERY SALE OF VALUABLE IMPROVED PROPERTY IN THE NORTH-EASTERN PART OF THE CITY, IN SQUARE 508.**

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Special Term in Equity, in cause numbered 8,557, Equity Docket 22, wherein Bartholomew Long, is complainant, and Jeremiah Long et al. are defendants, which decree was passed on the 27th day of September, 1883:

We will, on SATURDAY, October the 27th, A. D. 1883, commencing at the hour of 4½ p. m., in front of the premises, offer at public sale, lots six (6) and ten (10), in square eight hundred and eight (808), in the city of Washington, District of Columbia, lot 10, being improved by a two-story brick house, store and dwelling-house on northeast corner of 4th and H streets, n. e.

Terms of sale as prescribed by said decree, are one-fourth cash and residue at six, twelve and eighteen months, in equal payments, the purchaser or purchasers, giving notes bearing six per cent. interest per annum from date of sale and secured by deed of trust upon the property purchased. All conveyancing at the cost of the purchaser or purchasers.

A deposit of one hundred dollars [100], on each lot must be made when the property is knocked down.

HENRY WISE GARNETT, Trustee,  
No. 2, Columbia Law Building,  
WILLIAM HENRY DENNIS, Trustee,  
No. 515 Thirteenth street, n. w.  
WEEKS & Co., Auctioneers. 41-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of October, 1883.**  
**CAROLINE WALKER**

**No. 8730. Eq. Doc., 23**

**PHILIP M. BIRCH ET AL.**  
 On motion of the plaintiff, by Mr. B. T. Hanley, her solicitor, it is ordered that the defendants, the unknown heirs of James H. Birch, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 True copy. Test: 41-3 **R. J. MEIGS, Clerk, &c.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 13th day of October, 1883.**  
**JAMES CAMERON**

**No. 8,731. Eq. Doc. 23.**

**DANIEL H. NICHOLS ET AL.**  
 On motion of the plaintiff, by Mr. B. T. Hanley, his solicitor, it is ordered that the defendants, Rebecca H. Leggett, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 41-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. October 12, 1883.**

In the case of Henry V. Boynton, Administrator of Anthony M. Soteldo, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

41-3 Test: **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. October 12, 1883.**

In the matter of the Will of Theodore A. Offerdinger, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Alice M. Offerdinger.

All persons interested are hereby notified to appear in this court on Friday, the 2d day of November next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
 Test: **H. J. RAMSDELL, Register of Wills.**  
**F. E. ALEXANDER, Solicitor, 482 La. Ave. 41-3**

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elmore W. Tuttle, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1883.

**J. B. DUNNING, Administrator. 40-3**  
**JOHN J. WEED, Solicitor.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis M. Geier, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1883.

**JOHN B. GEIER, Administrator. 40-3**  
**LEON TOSKINER, Solicitor.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. October 2, 1883.**

In the matter of the Will and Codicil of Thomas J. Abbott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by William B. Webb and Daniel R. Hagner.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will and Codicil should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
 Test: 40-3 **H. J. RAMSDELL, Register of Wills.**

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary E. Godey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of October, 1883.

**EDWARD GODEY,**  
**LEVIN T. CARTWRIGHT,**  
 Administrators.

**FRED. W. JONES, Solicitor.**

40-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jane Turnbull, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of October, 1883.

**HENRY TURNBULL,**  
**JEANNIE TURNBULL,**

**GORDON & GORDON, Solicitors.**

40-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. October 1, 1883.**

In the matter of the Will of Catharine Gossler, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Jacob L. Gossler, of Brooklyn, N. Y.

All persons interested are hereby notified to appear in this court on Friday, the 19th day of October next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHAS. P. JAMES, Justice.**  
 Test: **H. J. RAMSDELL, Register of Wills.**  
**WORTHINGTON & HEALD, Solicitors. 40-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Holding an Equity Court for said District.**  
**DANIEL MASON**

**In Equity No. 8558.**

**RACHAEL MASON ET AL.**  
 Eugene Carusi, trustee herein, having reported to the court, sale of part of lot No. 14, in square No. 288, (as described in the decree of sale), in the city of Washington, District of Columbia, to Henry C. Thorn, for \$2,610:

It is, this 4th day of October, A. D. 1883, ordered, by the court that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of November, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. **CHAS. P. JAMES, Justice.**  
 A true copy. Test: 40-3 **E. J. MEIGS, Clerk.**

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JOHN R. REED ET AL.

Equity. No 7962.

GEORGE W. REED ET AL.

George P. Goff, trustee in this cause, having reported the sale of the south 42 feet front, by the depth thereof of original lot 10, square 576, in the city of Washington, District of Columbia, to Mary Fuller, for the sum of \$2,100:

It is, this 24th day of September, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of October, next. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CATHERINE MILLER ET AL.

Equity. No. 8,574.

MARGARET WENLE ET AL.

The trustee in this cause having reported the sale of the real estate mentioned in these proceedings, viz: the western 17 feet and 9 inches front, by the depth of lot 10, in square 456, to Miss Frances Straub and Mathias Straub, for the sum of \$1,550 40; the 17 feet and 8 inches front by the depth of lot 10, in square 460, east of the western 17 feet and 9 inches to Charles P. Miller, for the sum of \$1,027.14; and the eastern 17 feet and 8 inches front by the depth of said lot 10, in said square 460, to Francis Miller, for the sum of \$947.94; and that the terms of sale have been complied with:

It is, this 26th day of September, A. D. 1883, ordered, that said sales be ratified unless cause to the contrary be shown on or before the twenty-seventh day of October, A. D. 1883. Provided, a copy of this order be published in some newspaper in the city of Washington, once a week for three weeks before the said 27th day of October next.

By the Court. CHAS. P. JAMES, Justice.  
True copy. Test: R. J. MEIGS, Clerk  
CHAS. A. WALTER, Sol'r. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Kirby, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1883.

ARTHUR B. CLAXTON, Executor.  
APPLEBY & EDMONSTON, Proctors. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of Philadelphia, Penna., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Josiah Curtis, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of September, 1883

LEVI CURTIS, Executor,  
468 N. 6th st., Philadelphia, Pa.  
Or to G. W. BALLOCH,

1006 F. st., city.  
R. ROSS PERRY, Solicitor. 39-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the case of Allan Rutherford, Administrator of John S. S. Maret, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 19th day of October A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 39-3 H. J. RAMSDELL, Register of Wills.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

JESSE LEE ADAMS ET AL.

No. 8408. Eq. Doc. 22.

JAMES L. ADAMS ET AL.

Thomas I. Gardner, the trustee in this cause, having reported that he has sold lot ten (10), in square two hundred and sixty-eight (268), in the city of Washington to J. L. Adams, for the sum of two thousand five hundred dollars (\$2,500):

It is, thereupon by the court this 6th day of October, 1883, ordered, that the said sales as reported will stand ratified and confirmed on the 8th day of November next, unless cause to the contrary be shown on or before that day. Provided, a copy of this order be published once a week for three successive weeks in some newspaper printed in the city of Washington, before said 8th day of November next.

By the Court. CHAS. P. JAMES, Justice, &c.  
True copy. Test: 41-8 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William E. Schoenborn, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

MARY A. SCHOENBORN.  
CHAS. A. WALTER, Solicitor. 39-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Sarah A. Keating, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of July, 1883.

39-3 JOHN F. ENNIS, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of David P. Holloway, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of September, 1883.

REUBEN F. BAKER, Administrator.  
EDWARDS & BARNARD, Solicitors. 40-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 26th day of September, 1883.

DAVID FERGUSON

No. 8717. Eq. Doc. 23.

GUSTAVUS A. HENDERSON ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendant, Gustavus A. Henderson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 39-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. September 28, 1883.

In the matter of the Will of James T. Peake, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of said deceased has this day been made by John H. Peake and William C. Peake.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
WM. B. LORD, Solicitor. 39-3



# Washington Law Reporter

WASHINGTON - - - - - October 27, 1883

GEORGE B. CORKHILL - - - EDITOR

As ground for the reversal of a judgment it was urged that the court allowed the attorney of the defendants below to withdraw from the case and proceeded to trial and judgment without notice to the clients of said attorney, that their said attorney had withdrawn, and without "admonishing said attorney of his duty." *Held*, that it was not the legal duty of the court in civil cases to see that the litigants are supplied with attorneys in every stage of the proceedings; that undoubtedly it is within the discretion of a court to delay proceedings in a cause, when, without the fault of a party thereto, an attorney unexpectedly withdraws from the case to the injury of his client; but the discretion of the court, either exercised or in refusing to act therein is not ground of error. (*Leahy v. Dunlop*, Sup. Ct. of Cal., May 11, 1883.)

Where an administrator refused upon the application of parties interested in an estate, to bring suit for certain stocks to which they claimed the estate was entitled, it was held that a court of equity would not entertain a bill brought by them in their own names to compel the transfer of the stocks to the administrator; that the whole power and duty of taking possession of the assets of an estate and of recovering them by suit if necessary, is committed by the law to the executor or administrator, and where he neglects his duty the law furnishes ample remedy to parties interested in a suit on his bond, or in proceedings in the probate court for his removal, or for the disallowance of his probate account. (*Butler v. Sisson*, Sup. Ct. of E. and A. of Conn., 16 Reps. 393., 49 Conn.)

IN an action on a policy of insurance it is not necessary to set out in *hæc verba* in the declaration the several conditions in the policy, and then allege performance. (*Tripp v. The Vermont Life Ins. Co.*, 55 Vt.)

## Book Notice.

*Insanity, Considered in its Medico-Legal Relations.* By T. R. Buckham, A. M. M. D., Philadelphia. J. B. Lippincott & Co., 1883. This is a neatly printed volume of 250 pages. The author announces that in its preparation the chief objects in view were "to point out the pernicious uncertainty of verdicts in insanity trials, with the hope that by arousing attention to the magnitude of the evil, at least some of the more objectionable features of our medical jurisprudence may be removed," and "to criticise severely and to censure when necessary, not the individuals, but the system which has made insanity trials a reproach to courts, lawyers and the medical profession."

The "Physical Media," the "Psychical or Metaphysical" and the "Somatic" theories are discussed; the variant definitions of insanity given by numerous authorities are grouped together to show that there is no one that commands general assent, and to further show that the confusion among psychical authorities is supplemented in the law by a striking lack of well settled tests or well defined criteria for determining responsibility where insanity is alleged as a defence; he quotes from the decisions of judges, English and American, thirty-four in number, exhibiting their contradictions and inconsistencies in a manner at once ludicrous and humiliating.

The conclusion of the author is that no metaphysical or psychical definition or legal test has yet been found which can safely be invoked in determining the insanity of persons charged with crime, nor does he think a safe criterion will ever be found; he holds insanity not to be a disease of the mind, but a symptom or result of a physical disease, and hence, that no judge can give a legal test for it, and that the absurdity of attempting it is conclusively proved in practice by the contradictory rulings and tests promulgated in the various courts.

The author's panacea for the ills and uncertainties of trials is to impose the entire responsibility of determining directly, so far as a witness can, the question of the insanity of a defendant, upon experts qualified and appointed in a certain manner, the judges imperatively enforcing the rule that none but those eminent for their ability, knowledge and experience as such in their specialty, should be permitted to testify, and giving such experts full opportunity for informing themselves of the actual condition of the alleged insane person, and then to require them to depose directly to the court and jury as to his sanity or insanity,



with the reasons for their opinion, discarding hypothetical cases, and thereby transfer from the courts, who confessedly do not, to experts who professedly do, know all that is known of that complex subject.

Although the recommendations of the author may not commend themselves to all, yet the work is a vigorous step in the right direction, and from its perspicuity and the learning and reason displayed is well worthy of perusal by those who are interested in the subject of which it treats.

## United States Supreme Court.

Nos. 1, 2, 3, 26, 28.—OCTOBER TERM, 1883.

THE UNITED STATES, Plaintiff, *v.* MURRAY STANLEY, No. 1.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the District of Kansas.*

THE UNITED STATES, Plaintiff in Error, *v.* MICHAEL RYAN, No. 2.

*In Error to the Circuit Court of the United States for the District of California.*

THE UNITED STATES, Plaintiff, *v.* SAMUEL NICHOLS, No. 3.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Western District of Missouri.*

THE UNITED STATES, Plaintiff, *v.* SAMUEL D. SINGLETON, No. 26.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Southern District of New York.*

RICHARD A. ROBINSON and SALLIE J. ROBINSON, his wife, Plaintiffs in Error, *v.* THE MEMPHIS and CHARLESTON RAILROAD COMPANY, No. 28.

*In Error to the Circuit Court of the United States for the Western District of Tennessee.*

1. The 1st and 2d sections of the Civil Rights Act passed March 1st, 1875, are unconstitutional enactments as applied to the several states, not being authorized either by the XIIIth or XIVth Amendments of the Constitution.
2. The XIVth Amendment is prohibitory upon the states only, and the legislation authorized to be adopted by Congress for enforcing it is not direct legislation on the matters respecting which the states are prohibited from making or enforcing certain laws, or doing certain acts, but is corrective legislation, such as may be necessary or proper for counteracting and redressing the effect of such laws or acts.
3. The XIIIth Amendment relates only to slavery and involuntary servitude (which it abolishes); and although, by its reflex action, it establishes

universal freedom in the United States, and Congress may probably pass laws directly enforcing its provisions; yet such legislative power extends only to the subject of slavery and its incidents; and the denial of equal accommodations in inns, public conveyances and places of public amusement (which is forbidden by the sections in question), imposes no badge of slavery or involuntary servitude upon the party, but at most, infringes rights which are protected from state aggression by the XIVth Amendment.

4. Whether the accommodations and privileges sought to be protected by the 1st and 2d sections of the Civil Rights Act, are or are not, rights constitutionally demandable; and if they are, in what form they are to be protected, is not now decided.
5. Nor is it decided whether the law as it stands is operative in the territories and District of Columbia; the decision only relating to its validity as applied to the states.
6. Nor is it decided whether Congress, under the commercial power, may or may not pass a law securing to all persons equal accommodations on lines of public conveyance between two or more states.

Mr. Justice BRADLEY delivered the opinion of the Court:

These cases are all founded on the first and second sections of the act of Congress, known as the Civil Rights Act, passed March 1st, 1875, entitled "An act to protect all citizens in their civil and legal rights." (18 Stat., 335.) Two of the cases, those against Stanley and Nichols, are indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those against Ryan and Singleton, are, one an information, the other an indictment, for denying to individuals the privileges and accommodations of a theatre, the information against Ryan being for refusing a colored person a seat in the dress circle of Maguire's Theatre in San Francisco; and the indictment against Singleton being for denying to another person, whose color is not stated, the full enjoyment of the accommodations of the theatre known as the Grand Opera House in New York, "said denial not being made for any reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude." The case of Robinson and wife against the Memphis & Charleston R. R. Company was an action brought in the Circuit Court of the United States for the Western District of Tennessee, to recover the penalty of five hundred dollars given by the second section of the act; and the gravamen was the refusal by the conductor of the railroad company to allow the wife to ride in the ladies' car, for the reason, as stated in one of the counts, that she was a person of African descent. The jury rendered a verdict for the defendants in this case upon the merits under

a charge of the court to which a bill of exceptions was taken by the plaintiffs. The case was tried on the assumption by both parties of the validity of the act of Congress; and the principal point made by the exceptions was, that the judge allowed evidence to go to the jury tending to show that the conductor had reason to suspect that the plaintiff, the wife, was an improper person, because she was in company with a young man whom he supposed to be a white man, and on that account inferred that there was some improper connection between them; and the judge charged the jury, in substance, that if this was the conductor's *bona fide* reason for excluding the woman from the car, they might take it into consideration on the question of the liability of the company. The case is brought here by writ of error at the suit of the plaintiffs. The cases of Stanley, Nichols, and Singleton, come up on certificates of division of opinion between the judges below as to the constitutionality of the first and second sections of the act referred to; and the case of Ryan, on a writ of error to the judgment of the Circuit Court for the District of California sustaining a demurrer to the information.

It is obvious that the primary and important question in all the cases, is the constitutionality of the law: for if the law is unconstitutional none of the prosecutions can stand.

The sections of the law referred to provide as follows:

"Sec. 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

"Sec. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offence forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offence, be deemed guilty of a misdemeanor, and, upon

conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by state statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this provision shall not apply to criminal proceedings, either under this act or the criminal law of any state: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively."

Are these sections constitutional? The first section, which is the principal one, cannot be fairly understood without attending to the last clause, which qualifies the preceding part. The essence of the law is, not to declare broadly that all persons shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, and theatres; but that such enjoyment shall not be subject to any conditions applicable only to citizens of a particular race or color, or who had been in a previous condition of servitude. In other words, it is the purpose of the law to declare that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theatres, and other places of public amusement, no distinction shall be made between citizens of different race or color, or between those who have, and those who have not, been slaves. Its effect is to declare, that in all inns, public conveyances, and places of amusement, colored citizens, whether formerly slaves or not, and citizens of other races, shall have the same accommodations and privileges in all inns, public conveyances, and places of amusement as are enjoyed by white citizens; and *vice versa*. The second section makes it a penal offence in any person to deny to any citizen of any race or color, regardless of previous servitude, any of the accommodations or privileges mentioned in the first section.

Has Congress constitutional power to make such a law? Of course no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three Amendments. The power is sought, first, in the XIVth Amendment, and the views and arguments of distinguished Senators, advanced whilst the law was under consideration, claiming authority to pass it by virtue of that Amendment, are the principal arguments adduced in favor of the power. We

have carefully considered those arguments, as was due to the eminent ability of those who put them forward, and have felt, in all its force, the weight of authority which always invests a law that Congress deems itself competent to pass. But the responsibility of an independent judgment is now thrown upon this court; and we are bound to exercise it according to the best lights we have.

The first section of the XIVth Amendment (which is the one relied on), after declaring who shall be citizens of the United States, and of the several states, is prohibitory in its character and prohibitory upon the states. It declares that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited state laws and state acts, and thus to render them effectually null, void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation, or state action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the Amendment. Positive rights and privileges are undoubtedly secured by the XIVth Amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges,

and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect. A quite full discussion of this aspect of the Amendment may be found in *U. S. v. Cruikshank*, 92 U. S., 542; *Virginia v. Rives*, 100 U. S., 313, and *Ex parte Virginia*, 100 U. S., 339.

An apt illustration of this distinction may be found in some of the provisions of the original Constitution. Take the subject of contracts, for example. The Constitution prohibited the states from passing any law impairing the obligation of contracts. This did not give to Congress power to provide laws for the general enforcement of contracts; nor power to invest the courts of the United States with jurisdiction over contracts, so as to enable parties to sue upon them in those courts. It did, however, give the power to provide remedies by which the impairment of contracts by state legislation might be counteracted and corrected; and this power was exercised. The remedy which Congress actually provided was that contained in the 25th section of the judiciary act of 1789, giving to the Supreme Court of the United States jurisdiction by writ of error to review the final decisions of state courts whenever they should sustain the validity of a state statute or authority alleged to be repugnant to the Constitution or laws of the United States. By this means, if a state law was passed impairing the obligation of a contract, and the state tribunals sustained the validity of the law, the mischief could be corrected in this court. The legislation of Congress, and the proceedings provided for under it, were corrective in their character. No attempt was made to draw into the United States courts the litigation of contracts generally; and no such attempt would have been sustained. We do not say that the remedy provided was the only one that might have been provided in that case. Probably Congress had power to pass a law giving to the courts of the United States direct jurisdiction over contracts alleged to be impaired by a state law; and under the broad provisions of the act of March 3d, 1875, giving to the circuit courts jurisdiction of all cases arising under the Constitution and laws of the United States, it is possible that such jurisdiction now exists. But under that, or any other law, it must appear as well by allegation as proof at the trial, that the Constitution had been violated by the action of the state legislature. Some ob-

noxious state law, passed, or that might be passed, is necessary to be assumed in order to lay the foundation of any federal remedy in the case; and for the very sufficient reason, that the constitutional prohibition is against *state laws* impairing the obligation of contracts.

And so in the present case, until some state law has been passed, or some state action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the XIVth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the Amendment are against state laws and acts done under state authority. Of course, legislation may, and should be, provided in advance to meet the exigency when it arises; but it should be adapted to the mischief and wrong which the Amendment was intended to provide against; and that is, state laws or state action of some kind, adverse to the rights of the citizen secured by the Amendment. Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the state legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty and property (which include all civil rights that men have), are by the Amendment sought to be protected against invasion on the part of the state without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a state to any persons, of the equal protection of the laws, is prohibited by the Amendment, therefore Congress may establish laws for their equal protection. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation; that is, such as may be necessary and proper for counteracting such laws as the states may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the states may commit or take, and which, by the amendment, they are prohibited from committing or taking. It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.

An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the XIVth Amendment on the part of the states. It is not predicated on any such view. It proceeds *ex directo* to declare that certain acts committed by individuals shall be deemed offences, and shall be prosecuted and punished by proceedings in the courts of the United States. It does not profess to be corrective of any constitutional wrong committed by the states; it does not make its operation to depend upon any such wrong committed. It applies equally to cases arising in states which have the justest laws respecting the personal rights of citizens, and whose authorities are ever ready to enforce such laws, as to those which arise in states that may have violated the prohibition of the Amendment. In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the state or its authorities.

If this legislation is appropriate for enforcing the prohibitions of the Amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty and property? If it is supposable that the states may deprive persons of life, liberty, and property without due process of law (and the Amendment itself does suppose this), why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances and theatres? The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the states are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such state legislation or action. The assumption is certainly unsound. It is repugnant to the Xth Amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

We have not overlooked the fact that the fourth section of the act now under considera-

tion has been held by this court to be constitutional. That section declares "that no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars."

In *Ex parte Virginia* (100 U. S., 339), it was held that an indictment against a state officer under this section for excluding persons of color from the jury list is sustainable. But a moment's attention to its terms will show that the section is entirely corrective in its character. Disqualifications for service on juries are only created by the law, and the first part of the section is aimed at certain disqualifying laws, namely, those which make mere race or color a disqualification; and the second clause is directed against those who, assuming to use the authority of the state government, carry into effect such a rule of disqualification. In the *Virginia* case, the state, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the state actually laid down any such rule of disqualification, or not, the state, through its officer, enforced such a rule; and it is against such state action, through its officers and agents, that the last clause of the section is directed. This aspect of the law was deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering.

These sections, in the objectionable features before referred to, are different also from the law ordinarily called the "Civil Rights Bill," originally passed April 9th, 1866, and re-enacted with some modifications in sections 16, 17, 18 of the enforcement act passed May 31st, 1870. That law, as re-enacted, after declaring that all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and none other, any law, statute, ordinance, regu-

lation or custom to the contrary notwithstanding, proceeds to enact, that any person who, under color of law; statute, ordinance, regulation or custom, shall subject, or cause to be subjected, any inhabitant of any state or territory to the deprivation of any rights secured or protected by the preceding section (above quoted), or to different punishment, pains or penalties, on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and subject to fine and imprisonment as specified in the act. This law is clearly corrective in its character, intended to counteract and furnish redress against state laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words "any law, statute, ordinance, regulation or custom to the contrary notwithstanding," which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to state laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, &c., of any state or territory: thus preserving the corrective character of the legislation. (Rev. Stats., secs. 1977, 1978, 1979, 5510.) The civil rights bill here referred to is analogous in its character to what a law would have been under the original Constitution, declaring that the validity of contracts should not be impaired, and that if any person bound by a contract should refuse to comply with it under color, or pretence that it had been rendered void or invalid by a state law, he should be liable to an action upon it in the courts of the United States, with the addition of a penalty for setting up such an unjust and unconstitutional defence.

In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the state, or not done under

state authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the state for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and to sell, to sue in the courts, or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of state law or state authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment; and amenable therefor to the laws of the state where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the state by prohibiting such laws, it is not individual offences, but abrogation and denial of rights which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the states alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or wrong actually committed rests upon some state law or state authority for its excuse and perpetration.

Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the states, as in the regulation of commerce with foreign nations, among the several states, and with the Indian tribes, the coining of money, the establishment of post-offices and post-roads, the declaring of war, &c. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof. But where a subject is not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular state legislation or state action in reference to that subject, the power given is limited by its object and any legislation of Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of state officers.

If the principles of interpretation which we have laid down are correct, as we deem them to be, (and they are in accord with the principles laid down in the cases before referred to, as well as in the recent case of *U. S. v. Harris*, decided at the last term of this court,) it is clear that the law in question cannot be sustained by any grant of legislative power made to Congress by the XIVth Amendment. That Amendment prohibits the states from denying to any person the equal protection of the laws, and declares that Congress shall have the power to enforce, by appropriate legislation, the provisions of the amendment. The law in question, without any reference to adverse state legislation on the subject, declares that all persons shall be entitled to equal accommodations and privileges of inns, public conveyances, and places of public amusement, and imposes a penalty upon any individual who shall deny to any citizen such equal accommodations and privileges. This is not corrective legislation; it is primary and direct; it takes immediate and absolute possession of the subject of the right of admission to inns, public conveyances, and places of amusement. It supersedes and displaces state legislation on the same subject, or only allows it permissive force. It ignores such legislation, and assumes that the matter is one that belongs to the domain of national regulation. Whether it would not have been a more effective protection of the rights of citizens to have clothed Congress with plenary power over the whole subject, is not now the question. What we have to decide is, whether such plenary power has been conferred upon Congress by the XIVth Amendment; and, in our judgment, it has not.

We have discussed the question presented by the law on the assumption that a right to enjoy equal accommodations and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen which no state can abridge or interfere with. Whether it is such a right, or not, is a different question which, in the view we have taken of the validity of the law on the ground already stated, it is not necessary to examine,

We have also discussed the validity of the law in reference to cases arising in the states only; and not in reference to cases arising in the territories or the District of Columbia, which are subject to the plenary legislation of Congress in every branch of municipal regulation. Whether the law would be a valid one as applied to the territories and the District is not a question for consideration in the cases before us: they all being cases

arising within the limits of states. And whether Congress, in the exercise of its power to regulate commerce amongst the several states, might or might not pass a law regulating rights in public conveyances passing from one state to another, is also a question which is not now before us, as the sections in question are not conceived in any such view.

But the power of Congress to adopt direct and primary, as distinguished from corrective legislation on the subject in hand, is sought, in the second place, from the XIIIth Amendment, which abolishes slavery. This Amendment declares "that neither slavery, nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction;" and it gives Congress power to enforce the Amendment by appropriate legislation.

This Amendment, as well as the XIVth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect it abolished slavery, and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit. And such legislation may be primary and direct in its character; for the Amendment is not a mere prohibition of state laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.

It is true, that slavery cannot exist without law, any more than property in lands and goods can exist without law; and, therefore, the XIIIth Amendment may be regarded as nullifying all state laws which establish or uphold slavery. But it has a reflex character also, establishing and decreeing universal civil and political freedom throughout the United States; and it is assumed, that the power vested in Congress to enforce the article by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States: and upon this assumption it is claimed, that this is sufficient authority for declaring by law that all persons shall have equal accommodations and privileges in all inns, public conveyances, and places of public amusement; the argument being, that the denial of such equal accommodations and privileges is, in itself, a subjection to a species of servitude within the

meaning of the Amendment. Conceding the major proposition to be true, that Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents, is the minor proposition also true, that the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theatre, does subject that person to any form of servitude, or tend to fasten upon him any badge of slavery? If it does not, then power to pass the law is not found in the XIIIth Amendment.

In a very able and learned presentation of the cognate question as to the extent of the rights, privileges and immunities of citizens which cannot rightfully be abridged by state laws under the XIVth Amendment, made in a former case, a long list of burdens and disabilities of a servile character, incident to feudal vassalage in France, and which were abolished by the decrees of the national assembly, was presented for the purpose of showing that all inequalities and observances exacted by one man from another, were servitudes, or badges of slavery, which a great nation, in its effort to establish universal liberty, made haste to wipe out and destroy. But these were servitudes imposed by the old law, or by long custom which had the force of law, and exacted by one man from another without the latter's consent. Should any such servitudes be imposed by a state law, there can be no doubt that the law would be repugnant to the XIVth, no less than to the XIIIth Amendment; nor any greater doubt that Congress has adequate power to forbid any such servitude from being exacted.

But is there any similarity between such servitudes and a denial by the owner of an inn, a public conveyance, or a theater, of its accommodations and privileges to an individual, even though the denial be founded on the race or color of that individual? Where does any slavery or servitude, or badge of either, arise from such an act of denial? Whether it might not be a denial of a right which, if sanctioned by the state law, would be obnoxious to the prohibitions of the XIVth Amendment, is another question. But what has it to do with the question of slavery?

It may be that by the black code (as it was called), in the times when slavery prevailed, the proprietors of inns and public conveyances were forbidden to receive persons of the African race, because it might assist slaves to escape from the control of their masters. This was merely a means of preventing such escapes, and was no part of the servitude itself. A law of that kind could not



have any such object now, however justly it might be deemed an invasion of the party's legal right as a citizen, and amenable to the prohibitions of the XIVth Amendment.

The long existence of African slavery in this country gave us very distinct notions of what it was, and what were its necessary incidents. Compulsory service of the slave for the benefit of the master, restraint of his movements except by the master's will, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities were the inseparable incidents of the institution. Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences. Congress, as we have seen, by the civil rights bill of 1866, passed in view of the XIIIth Amendment, before the XIVth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens. Whether this legislation was fully authorized by the XIIIth Amendment alone, without the support which it afterwards received from the XIVth Amendment, after the adoption of which it was reenacted with some additions, it is not necessary to inquire. It is referred to for the purpose of showing that at that time (in 1866) Congress did not assume, under the authority given by the XIIIth Amendment, to adjust what may be called the social rights of men and races in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery.

We must not forget that the province and scope of the XIIIth and XIVth Amendments are different; the former simply abolished slavery; the latter prohibited the states from abridging the privileges or immunities of citizens of the United States, from depriving them of life, liberty or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of Congress under them are different. What Congress has power to do under one, it may not have power to do under the other. Under the

XIIIth Amendment, it has only to do with slavery and its incidents. Under the XIVth Amendment, it has power to counteract and render nugatory all state laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the equal protection of the laws. Under the XIIIth Amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not; under the XIVth, as we have already shown, it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against state regulations or proceedings.

The only question under the present head, therefore, is, whether the refusal to any persons of the accommodations of an inn, or a public conveyance, or a place of public amusement, by an individual, and without any sanction or support from any state law or regulation, does inflict upon such persons any manner of servitude, or form of slavery, as those terms are understood in this country? Many wrongs may be obnoxious to the prohibitions of the XIVth Amendment which are not, in any just sense, incidents or elements of slavery. Such, for example, would be the taking of private property without due process of law; or allowing persons who have committed certain crimes (horse stealing, for example) to be seized and hung by the *posse comitatus* without regular trial; or denying to any person, or class of persons, the right to pursue any peaceful avocations allowed to others. What is called class legislation would belong to this category, and would be obnoxious to the prohibitions of the XIVth Amendment, but would not necessarily be so to the XIIIth, when not involving the idea of any subjection of one man to another. The XIIIth Amendment has respect not to distinctions of race, or class, or color, but to slavery. The XIVth Amendment extends its protection to races and classes, and prohibits any state legislation which has the effect of denying to any race or class, or to any individual, the equal protection of the laws.

Now, conceding, for the sake of argument, that the admission to an inn, a public conveyance, or a place of public amusement, on equal terms with all other citizens, is the right of every man and all classes of men, is it any more than one of those rights which the states by the XIVth Amendment are for-



bidden to deny to any person? And is the Constitution violated until the denial of the right has some sanction or authority? Can the act of a mere individual, the owner of the inn, the public conveyance or place of amusement, refusing the accommodation, be justly regarded as imposing any badge of slavery or servitude upon the applicant, or only as inflicting an ordinary civil injury, properly cognizable by the laws of the state, and presumably subject to redress by those laws until the contrary appears?

After giving to these questions all the consideration which their importance demands, we are forced to the conclusion that such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it violative of any right of the party, his redress is to be sought under the laws of the state; or if those laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of state laws or state action, prohibited by the XIVth Amendment. It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with in other matters of intercourse or business. Inn-keepers and public carriers, by the laws of all the states, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them. If the laws themselves make any unjust discrimination, amenable to the prohibitions of the XIVth Amendment, Congress has full power to afford a remedy under that Amendment and in accordance with it.

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty and property the same as white citizens; yet no one, at that time, thought that it was any invasion of their personal status as freemen because they were not admitted to all the privileges enjoyed by white citizens, or because they were subjected to

discriminations in the enjoyment of accommodations in inns, public conveyances and places of amusement. Mere discriminations on account of race or color were not regarded as badges of slavery. If, since that time, the enjoyment of equal rights in all these respects has become established by constitutional enactment, it is not by force of the XIIIth Amendment (which abolishes merely slavery), but by force of the XIVth and XVth Amendments.

On the whole we are of opinion that no countenance of authority for the passage of the law in question can be found in either the XIIIth or XIVth Amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several states is concerned.

This conclusion disposes of the cases now under consideration. In the cases of the United States v. Michael Ryan, and of Richard A. Robinson and wife against The Memphis & Charleston Railroad Company, the judgments must be affirmed. In the other cases, the answer to be given will be that the first and second sections of the act of Congress of March 1st, 1875, entitled "An act to protect all citizens in their civil and legal rights," are unconstitutional and void, and that judgment should be rendered upon the several indictments in those cases accordingly. And it is so ordered.

## The Courts.

### U. S. Supreme Court Proceedings.

OCT. 22, 1883.

The following persons were admitted to practice:

George H. Howard, of Washington, D.C.; Henry P. Wells, of New York City; Charles F. Burton.

Nos. 898, 899. Benjamin F. Lee plaintiff in error, v. Francis F. Morton et al. Motion to advance submitted.

No. 1170. Thomas P. McManus, appellant, v. Mildred Standish et al. Appeal from the Supreme Court of the District of Columbia. Docketed and dismissed with costs.

No. 1171. Martha Brodnax, appeal, v. the Aetna Insurance Company. Appeal for the Circuit Court of the United States for the Southern district of Georgia. Docketed and dismissed with costs.

No. 856. G. B. Hunt et al., appellants, v. David P. Oliver. The motion for a writ of *supersedeas* or other writ under section 716 of the United States Revised Statutes. Argued.

No. 63. The Manhattan Life Insurance Company, plaintiff in error, v. John G. Boughton, trustee. Argued.

No. 66. The Connecticut Mutual Life Insurance

Company, plaintiff in error, v. Helen Pitkin. Passed under twenty-sixth rule.

No. 64. The Good Intent Tow-boat Company et al., appellants, v. the Atlantic Mutual Insurance Company of New York et al., and

No. 987. The Atlantic Mutual Insurance Company of New York et al., appellants, v. the Good Intent Tow-boat Company et al. Argued.

No. 65. The Union National bank of Chicago et al., plaintiffs in error, v. Jacob Wilder. Dismissed with costs per stipulation.

OCT. 23, 1883.

Adonjram J. Plowman, of Deadwood, Dakota, was admitted to practice.

No. 67. Mary R. Steever, appellant, v. James N. Rickman. Ordered that appellant pay costs due clerk within twenty days, or case will be dismissed.

No. 68. Robert and William Mitchell, plaintiffs in error, v. William G. Clarke. Passed.

No. 69. Albert Conro and W. S. Caskin, appellants, v. Charles S. Crane et al. Passed on account of sickness of counsel.

No. 67. The United States, appellant, v. Francis A. Gibbons, jr. Argued.

No. 70. Joseph Rane et al., appellants, v. Henry Saffe. Argued.

OCT. 24, 1883.

John M. Bowers, of New York city, was admitted to practice.

No. 8. Original ex parte: In the matter of Crow Dog, petitioner. Rule to show cause why the writ of habeas corpus and certiorari should not be granted awarded, returnable November 26, 1883.

No. 71. The Dubuque and Sioux City Railroad Company et al., plaintiffs in error, v. the Des Moines Valley Railroad Company. Passed.

No. 72. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard et al., etc.

No. 73. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard.

No. 74. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard and

No. 610. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard et al., etc. Argued.

No. 75. Michael Retzer, plaintiff in error, v. Alfred M. Wood, collector, etc. Argued.

No. 76. Henry Newman, plaintiff in error, v. C. A. Arthur, collector, etc. Argued.

No. 77. The Town of Berlin, plaintiff in error, v. John G. McCullough, administrator, etc. Argument commenced.

OCT. 25, 1883.

Albert Gallup, of New York City, and Thomas C. Lazear, of Pittsburgh, Pa., were admitted to practice.

No. 77. The town of Berlin, plaintiff in error, v. John G. McCullough, administrator, etc. Argument concluded.

No. 78. The Double Pointed Tack Company, appellant, v. Two Rivers Manufacturing Company, et al. Argued.

No. 79. The Pennsylvania Mutual Life Insurance Company, plaintiff in error, v. Maria Rutherford. Dismissed with costs.

No. 6. The County court of Clark county, plaintiff in error, v. the United States ex rel. William A. Johnson. Dismissed with costs.

No. 82. The County court of Clarke county,

plaintiff in error, v. the United States ex rel. C. E. Lewis. Dismissed with costs.

OCT. 26, 1883.

No. 4. The County court of Knox county, plaintiff in error, v. the United States ex rel. George W. Harshman.

No. 80. The County court of Knox county, etc., plaintiff in error, v. the United States ex rel. S. C. Davis.

No. 81. The County court of Knox county, etc., plaintiff in error, v. the United States ex rel. The Wells & French Co.

No. 83. Macon County court, etc., plaintiff in error, v. Alfred Huidekoper, relator.

No. 199. Henry McGonigle, treasurer of Knox county, etc., plaintiff in error, v. the United States ex rel. S. C. Davis. Argued.

No. 84. The Monongahela National Bank of Brownsville, Pa., plaintiff in error, v. Samuel H. Jacobus. Submitted.

No. 85. Jacob Estay et al., appellants, v. Riley Burdett. Passed.

No. 86. William Bailey et al., appellants, v. United States. Passed.

No. 88. The United States to use of N. Wilson, administrator, etc., plaintiff in error, v. David Walker. Argument commenced.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

OCT. 23, 1883.

Keyser, receiver, v. Hitz. Argument concluded and cause submitted.

United States ex rel., White v. Knox. On hearing.

OCT. 24, 1883.

Porter v. White. On hearing.

OCT. 25, 1883.

Porter v. White. Argued and submitted.

OCT. 26, 1883.

Fisk, Clark Flagg v. Hollander Bros. Appeal to the Supreme Court of the United States.

Ragan et al. v. Haight et al. Decree below affirmed.

#### EQUITY COURT.—Justice Cox.

OCT. 23, 1883.

Edmunds v. Kennedy. Commissioner ordered to get answer of infant defendant.

Coldwell v. Baltimore and Potomac Railroad Company. Rule on defendant returnable October 31.

Rodgers v. Rodgers. Order submitting John N. Macomb as trustee.

Lewis v. Lewis. Testimony ordered taken before Examiner John Cruickshank.

Proctor v. Proctor. Fivorce granted.

Joachim v. Glick. Revival of suit granted.

Days v. Costlin. Demurrer sustained with leave to amend.

OCT. 24, 1883.

Moses v. Hewitt. Bill of complaint dismissed. Birney v. Birney. Appearance of absent defendant ordered.

Nickerson v. Nickerson. Restraining order discharged and injunction denied.

Bomar v. Bomar. Substitution of solicitor ordered. Pro confesso against defendant and commission to take testimony.

Mills v. Mills. Testimony ordered taken before Examiner J. F. Riley.

Brown v. Hollidge. Testimony ordered taken in sixty days.  
Dugan v. Clarke. Reference to the auditor ordered.

OCT. 25, 1883.

Callahan v. English. Sale ratified nisi.  
Temple v. Worthington. Sale ratified finally.  
United Metropolitan Life Insurance Company v. Post. Reference to the auditor ordered.  
Phillips v. Walbridge. Auditor's report ratified.  
Whitney v. Christners. Sale ordered and James S. Edwards appointed trustee to sell.  
Browning v. Grant. Bill dismissed.  
Shehan v. Donaldson. Order appointing Elizabeth Donaldson guardian ad litem.  
Holtzclaw v. Ford. Sale by trustee ordered.

OCT. 26, 1883.

Moore v. Harrison. Sale ordered and Messrs. J. G. Payne and E. H. Thomas appointed trustee to sell.  
Herold v. Keilholtz. Order appointing William H. Keilholtz guardian ad litem.  
Noyes v. Gray. Deed of trustees Thomas and Cole validated.  
Casey v. White. Stock and fixtures ordered to be turned over to complainant.

#### CIRCUIT COURT.—Justice Mac Arthur.

OCT. 23, 1883.

United States, use of Stenzell, v. Maryman et al. Death of defendant, Neff, suggested and suit discontinued by plaintiff.  
District of Columbia v. Poor. Off calendar.  
Lathrop v. Simms. Verdict for defendant.  
District of Columbia v. Poor. Willard, administrator, v. Wood. Miller v. Bennett et al. Chipman et al. v. Crane. Lamon v. Saulsbury. All off calendar.

OCT. 24, 1883.

First National Bank v. District of Columbia. Off calendar.  
Stevens v. Cake. Reference to A. C. Bradley.  
Butler v. District of Columbia. Discontinued without costs.  
Cohen v. Cohen. Executors dismissed without costs.

Van Riswick v. Cissel et al. On trial.

OCT. 25, 1883.

Kirby v. Cartter. Suit dismissed by plaintiff.  
Smith v. Bolden. Fi. fa. Suspended until hearing of motion.  
Galt, Bro. & Co., v. Fitzgerald. Judgment by default.  
Roche & Co. v. O'Neill. Judgment confessed.  
Van Riswick v. Cissel et al. Jury out.  
Cahill v. Bacons. On trial.

OCT. 26, 1883.

Van Riswick v. Cissel et al. Verdict for plaintiff for \$560.  
Cahill v. Bacon. Verdict for plaintiff for amount claimed.  
Parkinson v. Metropolitan Railroad Company. On trial.

#### CRIMINAL COURT.—Justice Wylie.

OCT. 23, 1883.

John W. Coomes. Receiving stolen property, etc.; not guilty.

OCT. 24, 1883.

George W. McElfresh and Charles E. Flinder. Receiving stolen goods; on trial.

#### CIRCUIT COURT.—New Suits at Law.

OCT. 22, 1883.

24851. Franklin Bild v. The Baltimore & Potomac R. R. Co. Damages, \$6,000. Pliffs attys, Cook & Cole.  
24852. Rudolph Bild v. The Baltimore & Potomac R. R. Co. Damages, \$16,000. Pliffs attys, Cook & Cole.  
24853. N. W. Fitzgerald v. Charles T. Murray. Libel, \$50,000. Pliffs attys, E. W. Grant.  
24-54. George E. Kirk v. Louis R. Hopfenmaier. Appeal. Defts atty, L. Tobriner.  
24855. Annie M. Boston et al. v. Julia A. Powell. Slander, &c., \$5,000. Pliffs attys, Riddle, Davis & Padgett.  
24856. Anne M. Hudson v. Charles E. Barber. Certiorari. Defts attys, Hine & Thomas.

OCT. 23, 1883.

24857. The U. S. ex rel. Harlow D. Street v. Robt. T. Lincoln. Mandamus. Pliffs attys, Shellarbarger & Wilson.

OCT. 24, 1883.

#### IN EQUITY.—New Suits.

OCT. 22, 1883.

8755. Benjamin P. Riley et al., upon petition of Virginia S. Riley, guardian, &c. For leave to file in S. C. D. C. Certificate of guardianship. Com. sol., I. Williamson.  
8756. George A. Shehan v. Elizabeth Davidson et al. Creditors' bill. Com. sol., E. B. Hay. Defts sol., R. B. Washington.  
8757. Simon H. Semon v. Theodore Wetmore et al. Injunction. Com. sol., L. Tobriner.

OCT. 23, 1883.

8758. Silas C. Caldwell et al. v. Baltimore & Potomac R. R. Co. Injunction. Com. sol., A. C. Bradley.  
8759. Edward A. Rollins v. Zenas C. Robbins. To validate lease, &c. Com. sol., H. H. Wells.  
8760. Martha M. Burns v. James N. Burns. Divorce. Com. sol., B. T. Hanley.  
8761. Robert W. Taylor v. Mary Z. Taylor et al. To sell lot 5, square 339. Com. sol., I. G. Kimball.

#### PROBATE COURT.—Justice James.

OCT. 26, 1883.

Estate of Michael Nash; will admitted to probate and record and letters testamentary on bond of \$20,000, issued to the widow, Ann Maria Nash.  
Estate of Susanna V. Walker; citation against administrator returned served and cause continued to file answer.  
Estate of Charles H. Crane; will admitted to probate and record and letters testamentary issued to the widow on bond of \$1,500.  
In re Malvina Mason, minor; order appointing Frances Mason guardian on bond of \$100.  
Estate of James T. Peake; proof of publication filed, will fully proven and admitted to probate and record.  
Estate of Thomas J. Abbott; will admitted to probate and record and letters testamentary issued to Dr. Daniel R. Hagner and William B. Webb, executors, on bond of \$60,000.  
In re Maria A. and De Witt H. Allen, minors; order appointing James T. Allen guardian on filing bond in the sum of \$700.  
Estate of Colin T. Speer; renunciation and assent of widow, and order appointing Benjamin D. Cramer administrator on bond of \$200.  
Estate of Catharine Gossler; proof of publication filed, will admitted to probate and letters testamentary issued to Jacob L. Gossler, and bond fixed at \$18,000.  
Estate of Henry Hopp; order appointing Susan Hopp guardian of the orphan children on bond of \$150.  
Estate of David Welch; order of publication issued and one appointing John Mitchell collector on bond of \$1,000.  
Estate of Cyrus D. Fletcher; order appointing Frank W. Fletcher administrator on bond of \$1,400.  
In re Matthew Ruppert; order appointing the petitioner guardian to his minor children.

#### Legal Notices.

##### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Patrick Corcoran, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of October, 1883.

SALLIE SHEA, Administratrix.  
EDWARDS & BARNARD, Solicitors.

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## Legal Notices.

**CHANCERY SALE OF VALUABLE IMPROVED BUSINESS PROPERTY AND DWELLINGS, LOCATED No. 929 D STREET NORTHWEST; NO. 309 NINTH STREET NORTHWEST; NO. 1801 SEVENTH STREET NORTHWEST, CORNER N STREET; NO. 601 H STREET, CORNER SIXTH; NO. 603 H STREET NORTHWEST; NO. 805 H STREET NORTHWEST, AND NO. 627 F STREET NORTHWEST, BELONGING TO THE ESTATE OF THE LATE DOUGLASS MOORE.**

By virtue of a decree of the Supreme Court of the District of Columbia, holding an Equity Court, passed on the 25th day of October, 1883, in a cause numbered 6,192, Equity Docket 18, the undersigned Trustees will sell at public auction, in front of the respective pieces of property, on the days and at the hours hereinafter named—that is to say, on MONDAY, the TWELFTH DAY OF NOVEMBER, A. D. 1883, at FOUR O'CLOCK P. M., the following described Real Estate, situate in the City of Washington, in the District of Columbia, to wit: Part of lot numbered six (6) in square numbered three hundred and seventy-eight (378), beginning for the same at the southeast corner of the said lot numbered six (6), and thence running due north one hundred and eighty-seven [187] feet ten [10] inches and one-half [ $\frac{1}{2}$ ] an inch to a public alley; thence with the line of said alley due west thirty [30] feet six [6] inches and one-half [ $\frac{1}{2}$ ] an inch; thence at right angles due south through said lot one hundred and eighty-seven [187] feet ten [10] inches and one-half [ $\frac{1}{2}$ ] an inch to north D street; thence with the line of said D street, due east thirty [30] feet six [6] inches and one-half [ $\frac{1}{2}$ ] an inch to the place of beginning.

AND ON SAME DAY, at FIVE O'CLOCK P. M., that other certain piece or parcel of real estate and premises situate in said city and District, known as and being lot numbered or lettered "D," in Simson Meade's subdivision of square numbered four hundred and eight [408], commencing for the same at a point on 9th street west sixty-seven [67] feet eleven and one-half [ $\frac{1}{2}$ ] inches from the northwest corner of said square, and running thence south twenty-four [24] feet four [4] inches; thence east ninety-nine [99] feet eleven [11] inches; thence north twenty-four [24] feet four [4] inches; thence west ninety-nine [99] feet eleven [11] inches to the place of beginning.

AND ON TUESDAY, the THIRTEENTH DAY OF NOVEMBER, A. D. 1883, at FOUR O'CLOCK P. M., that other certain piece or parcel of real estate and premises situate in said city and District, known as and being part of lot numbered seven (7) in square numbered four hundred and forty-seven [447], beginning for the same at the southwest corner of said lot and square, and running thence north along the line of 7th street west twenty [20] feet; thence east eighty [80] feet; thence south twenty [20] feet to north N street, and thence west eighty [80] feet to the place of beginning.

AND ON SAME DAY, at FIVE O'CLOCK P. M., that other certain piece or parcel of real estate and premises situate in said city and District, known as and being a part of lot numbered one [1] in square numbered four hundred and fifty-three [453], beginning for the same at the southeast corner of said lot and running thence north on 6th street west eighty-five [85] feet to the rear line of said lot; thence west with said line sixteen [16] feet; thence parallel with said 6th street eighty-five [85] feet to H street north, and thence east on said H street sixteen [16] feet to the beginning.

AND ON SAME DAY, IMMEDIATELY AFTER ABOVE, that other certain piece or parcel of real estate and premises situate in said city and District, known as and being part of lot numbered one [1] in square numbered four hundred and fifty-three [453], beginning for the same at a point sixteen [16] feet west from the southeast corner of said lot, and running thence west seventeen [17] feet; thence north eighty-five [85] feet; thence east seventeen [17] feet; thence south eighty-five [85] feet to the place of beginning.

AND ON SAME DAY, IMMEDIATELY AFTER ABOVE, that other certain piece or parcel of real estate and premises situate in said city and District, known as and being part of lot numbered one [1] in square numbered four hundred and fifty-three [453], beginning for the same at a point on "H" street north, distance fifty-six [56] feet west from the southeast corner of said square, and running thence east twenty-three [23] feet; thence north eighty-five [85] feet; thence west twenty-three [23] feet; thence south eighty-five [85] feet to said "H" street and the place of beginning.

AND ON WEDNESDAY, the FOURTEENTH DAY OF NOVEMBER, A. D. 1883, at FOUR O'CLOCK P. M., that other certain piece or parcel of real estate and premises situate in said city and District, known as and being the east half of lot numbered six [6] in square numbered

## Legal Notices.

four hundred and fifty-five [455], as the same is laid off on the ground plan or a survey of said city, together with all the improvements on said pieces of property.

Terms of sale, as prescribed by said decree, are as follows: The purchase-money to be paid one-third in cash and the residue in equal installments in one and two years from the day of sale, the whole to bear interest from the day of sale, and the payment thereof to be secured on the property sold for cash to be paid on the day of sale or on ratification thereof by the chancellor. A deposit of five hundred dollars [\$500] on each of the pieces of property located at No. 929 D street northwest; 309 9th street northwest, and 627 F street northwest; and of two hundred dollars [\$200] on each of the remaining pieces of property, will be required at the time of sale, and the whole cash payment must be made within ten [10] days after sale. All conveyancing and recording at purchaser's cost. If the terms of sale are not complied with within ten [10] days after any sale made, the trustees reserve the right to sell any piece of property upon which default has been made, at the risk and cost of the defaulting purchaser, and after one week's notice by advertisement in one newspaper.

JAMES G. PAYNE,  
482 Louisiana avenue,  
EDWARD H. THOMAS, } Trustees.  
Room 8, 916 F street, N. W.,  
DUNCANSON BROS., Auctioneers. 43-2

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily F. Sullivan, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of October, 1883.

HARRIOTT M. SULLIVAN.

GORDON & GORDON, Solicitors. 43-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

GEORGE CALLAGHAN, Guardian } No. 8569. Eq. Doc. 23.

MARY J. ENGLISH ET AL.

John A. Clarke, trustee herein, having reported sale of part of lot 12, in square 41 [The same being more fully described in said report] to John E. Vogt, for fifteen hundred and eighty-five [\$1,585] dollars:

It is, this 25th day of October, 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of November, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. [Signed] CHAS. P. JAMES, Justice.

True copy. Test: 43-3 R. J. Meigs, Clerk.

## THIS IS TO GIVE NOTICE

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles H. Crane, late of the U. S. Army, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of October, 1883.

SARAH N. CRANE, Executrix.

WM. B. WEBB, Solicitor. 43-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, October 23, 1883.

In the matter of the Estate of David Welsh, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by John Mitchell.

All persons interested are hereby notified to appear in this Court on Friday, the 23d day of November next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WALTER S. COX, Justice.

Test: H. J. RAMSDALL, Register of Wills.

BEVA A. LOCKWOOD, Solicitor. 43-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding an Equity Court, the 12th day of October, 1883.**

**MARTIN V. B. HOFFMAN ET AL.**

No. 8625. Eq. Dec. 23.

**LAWRENCE CALLAN ET AL.**  
Ordered, that the sale made and reported October 11, 1883, by Benjamin F. Leighton, trustee for the sale of the real estate in this cause, be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of November next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter. The report states that the lot described in complainant's bill sold for \$1,010:

By the Court. **CHAS. P. JAMES, Justice.**  
True copy. Test: 41-3 **R. J. Mingo, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hermann H. Diebitsch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1883.

**MAGDALENE DIEBITSCH, Executrix.**

**WM. R. WOODWARD, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Magee, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of September next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

**LAURA MAGEE, Executrix.**

**LEON TOBRINER, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Allyn, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of October, 1883.

**W. H. H. SMITH,**

**MARIA B. SMITH,**

Executors.

**ORAPIN BROWN, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary Jaffrey Field, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1883.

**RICHARD CROWTHER, Executor.**

**J. J. JOHNSON, Solicitor.** 41-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Margaret Adams, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of October, 1883.

**BENJAMIN P. SNYDER, Executor.**

**R. ROSS PERRY, Solicitor.** 41-3

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elizabeth S. Rogers, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of September next: they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of September, 1883.

**JAMES R. ROGERS,**

**IRVING WILLIAMSON, Solicitor.** 41-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of October, 1883.**

**CAROLINE WALKER**

No. 8790. Eq. Dec. 23

**PHILIP M. BIRCH ET AL.**  
On motion of the plaintiff, by Mr. B. T. Hanley, her solicitor, it is ordered that the defendants, the unknown heirs of James H. Birch, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**

A true copy. Test: 41-3 **R. J. Mingo, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 18th day of October, 1883.**

**JAMES CAMERON**

No. 8,731. Eq. Dec. 23.

**DANIEL H. NICHOLS ET AL.**  
On motion of the plaintiff, by Mr. B. T. Hanley, his solicitor, it is ordered that the defendants, Rebecca H. Leggett, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**

A true copy. Test: 41-3 **R. J. Mingo, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

**CHARLES H. ARMES, Administrator of Emory W. Du Bose, deceased, complainant,**

No. 8,734. Equity Docket 23.

**THOMAS C. DU BOSE ET AL., defendants.**

On motion of the complainant, it is this eighth day of October, 1883, ordered, that the defendants, Thos. C. Du Bose, William H. B. Du Bose, Hester S. Huggins, Robert J. Huggins, Drucilla C. P. Hallford, J. G. Hallford, Wylie Skinner, C. S. Skinner, A. F. Skinner, N. E. Skinner, H. B. Skinner, W. M. Skinner, Martha J. Beasley, E. E. Beasley, and Galloway, her husband, J. H. Beasley, T. S. Du Bose, R. E. B. Du Bose, J. L. R. Du Bose, E. M. L. Du Bose, Oscar Beverley Du Bose, Lucius Beilinger Du Bose, Nyen Middleton Du Bose, William Perry Du Bose, Laurence J. Stokes, Elliott E. Stokes, Emilie L. Waits, Mary H. Paschall, T. R. Waits, W. Y. Paschall, Albert Jordan, and Jordan, his wife, W. W. Thompson, and Thompson, his wife, and Frank H. Du Bose, cause their appearance to be entered in this cause on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**

A true Copy. Test: 41-3 **R. J. Mingo, Clerk.**

By M. A. CLANCY Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term in Equity.**

**ABIGAIL M. McDERMOTT ET AL.**

No. 1196. Eq. Dec. 8.

**JEANNIE A. McDERMOTT ET AL.**  
William B. Webb, the trustee appointed in this cause, having reported to the court that in pursuance of its decree he made sale of lots numbered one (1), two (2), three (3), four (4), five (5) and twenty four (24), in square numbered six hundred and twenty-one (621), to Thomas E. Waggaman, at and for the price and sum of sixteen cents per square foot, the whole purchase money being \$9,120.00, that the said purchaser has assumed the payment of the taxes in arrears and unpaid upon the said lots and has paid or secured to be paid the balance of said purchase money: It is, by the court, this 10th day of October, 1883, ordered, that the sale be and the same is hereby ratified and confirmed unless cause to the contrary thereof be shown to the court on or before the 13th day of November, 1883. Provided, a copy of this order be published in the Law Reporter once a week for three weeks before the said 13th day of November, 1883.

By the Court. **CHAS. P. JAMES, Justice.**

A true Copy. Test: 41-3 **R. J. Mingo, Clerk.**

# Washington Law Reporter

WASHINGTON - - - - - November 17, 1888

GEORGE B. CORKHILL - - - EDITOR

A NOVEL question was presented for the consideration and decision of Commissioner of Patents Marble before his retirement from office and as the ruling of the Commissioner is the only precedent on the subject we state the case for the benefit of practitioners before the Patent Office.

Section 4896 Revised Statutes provides that—

"When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have claimed or enjoyed by him in his lifetime; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them."

The widow of one Wm. H. Reynolds, of New Orleans, who had been appointed, under the laws of the State of Louisiana, *tutrix*, administering on the estate of her deceased husband, applied in her representative capacity for Letters-Patent for an improvement in cotton-presses invented by her deceased husband. This application was presented by the attorney of record, Mr. H. N. Jenkins, and the Examiner refused to consider the application as the language of the statute required applications of this nature to be made by either an executor or administrator. An appeal was taken to the Commissioner in person and the question argued by Mr. Warren C. Stone, of the Washington bar. It was urged in support of the appeal that inasmuch as Reynolds died testate and his estate was solvent, under the civil law in force in Louisiana the estate could not have an administrator, and that the functions ordinarily devolving on an administrator in the common law States of the Union, were delegated by the laws of Louisiana to the *tutor* or *tutrix* of the solvent estate, and it was shown that this had been repeatedly decided in the Louisiana

courts. It was further urged that to refuse this *tutrix* her application was an evasion of the spirit of the act of Congress relating to patents, as well as a violation of the Constitution of the United States in discriminating against the citizens of the State of Louisiana in favor of those in the other States where a technical compliance with the statute would be observed. Commissioner Marble, in deciding this question, overruled the Examiner and held that the *tutrix* could proceed with the application. His decision is as follows:

"No will having been made by the deceased inventor, and the laws of the State of Louisiana not providing for the appointment of an administrator in cases where no debts or liabilities exist against the estate, but do provide in such cases for a tutor or *tutrix*, this application, executed by the *tutrix* may be received and considered as properly executed."

## Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

YATES ET AL vs. SEITZ ET AL.

In General Term. Equity, No. 1050.

Decided December 4, 1889.

Where, on a bill filed by a judgment creditor in behalf of himself and others who may afterwards come in, an equity of redemption is decreed to be sold, the court will apply the proceeds, after the satisfaction of the trust, to the payment of the judgments according to their priority in point of time.

THE CASE is stated in the opinion.

Mr. Justice WYLLIE delivered the opinion of the court.

This is an appeal from a decree of the special term affirming an auditor's report.

The facts of the case are as follows:

The defendant, being the owner of real estate, made several deeds of trust to secure indebtedness, and subsequently contracted other debts which the creditors put in judgments. A bill was filed by one of these creditors, on behalf of himself and others who might come in, praying a sale of the property. A trustee was appointed to make it, but the sum brought was insufficient, after satisfying the trusts, to pay in full all the judgment creditors who proved their claims.

The auditor reported the judgments were to be paid according to their respective priorities, thus entirely excluding many junior ones; exceptions were filed and overruled. The correctness of this ruling is the subject for decision.

At common law execution for money was leviable only on the goods and chattels of the defendant. The feudal privileges of the lord were inconsistent with a power in the tenant of the land to alien or incumber it.

But by statute of 2d Westminster (13 Edw. I, ch. 18), the plaintiff was given the right either to issue a *fi. fa.* as formerly, or a new writ called *elegit*. Under this latter he could sell neither goods nor lands; but he might levy upon all the defendant's goods, except his oxen and beasts of the plow, and one-half his lands, at a fair and reasonable extent, or valuation for their use, until the judgment should be satisfied; and this extent was to be ascertained by a jury of twelve men summoned by the sheriff.

In this way judgments first became liens on land; not that they were made so directly by act of Parliament, but only because land might be taken in execution under the *elegit*.

This was the law in Maryland until it was superseded, in practice, by the act of 5th George II, ch. 7, which subjected lands to be sold under *feri facias*, in like manner as goods and chattels; but no lands could be thus seized and sold under execution except those in which the defendant had a legal estate.

Nor was any trust estate in land liable to the *elegit* given by the statute of Westminster 2d, until after the passage of the Statute of Frauds and Perjuries, by the 10th section of which lands which were held simply in direct trust for the defendant, were made liable to be extended under that writ; and that section of the law is now in force in this District.

The trust which existed on the land of the defendant, in the present case, was not such a trust as this, but was a trust for the payment of the debt thereby secured.

During the existence of that trust, therefore, the land in question could not have been taken in execution and sold under a *feri facias* issued by any of the judgment creditors; but in order to obtain a sale of the land, it was necessary to apply to the chancery jurisdiction of the court, by bill, praying for a sale of the property for the satisfaction of the judgments, and of the prior deed of trust, and make the trustee who held the legal title a party defendant. That has been done, and the court decreed an absolute sale of the property, including both the legal and equitable title thereto, and the holder of the legal title, under the trust deed, was thus divested of his title, and the proceeds of the sale applied in the first place to the payment of the debt secured by the deed of trust. After the satisfaction of that debt, out of the proceeds

there remains a surplus, but it is not sufficient to pay all the judgments.

The older of these judgment creditors claim to be first satisfied according to the priority of their respective judgments. This would leave nothing to be applied to the younger judgments; and these younger creditors now claim that the fund should be apportioned *pro rata*, equally, amongst all the judgments, on the ground that, as none of the judgments were a lien on the property, at the time of the sale, the proceeds should be distributed like equitable assets, on the principle that equality is equity.

We think, however, that the doctrine of the distribution of equitable assets is one which has no application to the present case.

That doctrine applies only to the payment of debts due by a deceased person, and not to a fund arising from the sale under decree of court of the estate of a living person in the condition of the property which was so sold in the present instance. The word *assets* signifies *good enough* to discharge that burden which is cast upon the executor or heir in satisfying the debts and legacies of the testator or ancestor." (Tomlin's Dict.)

The personal property in the hands of the executor is legal assets. So also is the real estate descended to the heir assets in his hands, as to these contracts of the ancestor in which the heir is bound. If the heir be bound by the bond of his ancestor, the obligee may have his action against the heir, and obtain satisfaction of his judgment from the land descended to the heir, without going into a court of equity, because the heir is bound specifically by the terms of the bond. In such case the land is called legal assets, and the bond creditor may obtain payment of his debt in full, although a simple contract creditor would be cut out altogether. But if the descent to the heir be interrupted, and the testator has devised the land to the executor, or to a third person in trust to pay debts, the remedy at law of the obligee against the heir is lost, and he must look for payment to the trustee, to whom the estate was devised. He cannot maintain an action at law against the trustee, upon the testator's bond, as he might have done against the heir, had there been no will; but his only remedy is in equity against the trustee. But if he go into equity for that purpose, that court will give him no preference over the simple contract creditors, but pay all, both the simple and the bond creditors alike.

Under the old law as observed by Lord Camden in *Silk v. Prime* (1 Bro. C. C., 138) "no injury was done by the court to specialty



creditors; for though real estates were assets, at law to pay such debts yet they might then be defeated by the debtor's will, or the heir's alienation" (before judgment against the latter). The assets thus reached by the aid of a court of equity, are what are called equitable assets, and are always distributed equally amongst the creditors, because in such case, none of them has a priority by lien or otherwise.

In the distribution of the assets of a deceased person's estate, the object of the court is to bring all parties interested before it and to administer upon all the assets and to close it up. (In the case of the distribution of a fund derived from the sale of property belonging to a living person, made under decree of court, no estate is to be settled, but only a fund to be distributed, amongst such creditors as have already procured a lien upon the fund, and if there be a surplus it will be handed to the owner of the property sold, notwithstanding he may have numerous creditors, whose claims have not been reduced to liens.

If we were, in the present case, to be led by the doctrine of equitable assets, we should be bound to go much further than is asked by the complainants; and direct a reference to the auditor, with instructions to publish a notice requiring all parties interested as creditors of the defendant whether by judgment or otherwise to come before him, and prove their claims, in the same manner as though he were deceased; and make a *pro rata* distribution amongst them all).

But in our view the judgments in the present instance are liens on the fund in controversy, according to their priority, by well settled principles, and on authority.

The fund is the result of a sale under decree of court, in a case where the holder of the legal title was a party as well also as was the holder of the equitable title. The sale gave a perfect legal and equitable title to the purchaser. The trust deed is satisfied and extinguished, and is to be put out of consideration in this case. The residue of the fund which is alone the subject of this suit, therefore, must be regarded as the proceeds of a sale of the whole, absolute and perfect title in law and equity, according to the doctrine of equitable conversion. The object of the grantor in the deed of trust, was not to part with his whole interest in the property, but only of so much as would suffice to pay the debt, in case a sale should become necessary. By the sale the encumbrance was removed, and the residue is his without that incumbrance. It is, therefore, a legal estate in the property now represented by its proceeds;

and these proceeds should be distributed as the proceeds of a clear, perfect estate in the property.

In *Moses et al. v. Murgatroyd et al.*, 1 Johns Ch. R., 119, it was held that the administrator of a mortgagor is not entitled to the surplus moneys arising from the sale of the mortgaged premises; but that such surplus must be considered as part of the real estate, and descend to the heirs.

And it was only carrying out this doctrine to its logical result, when the Lord Chancellor decided in *Sharpe v. the Earl of Scarborough*, 4 Ves., 538, that an equity of redemption of a mortgage in fee, is not equitable assets, as against judgment creditors, because the judgment creditor has a right to redeem the mortgage. And in *Lee et al. v. Stone et al.*, 5 Gill & J., 1, it was decided by the Supreme Court of Maryland, that in equity the equitable estate of a deceased debtor is bound to the same extent as a legal estate of like quality and duration would be bound at law.

The very point in dispute, also, has been decided at least twice by the Court of Appeals of Virginia.

In *Haleys v. Williams*, 1 Leigh, 142, that court says: "It is a settled rule in respect to the satisfaction of judgments and other liens upon an equitable fund, where neither has the legal title, that all are to be paid according to their priority in point of time, upon the maxim, *in equali jure, qui prior est in tempore, potior est in jure.*" *Symmes v. Symonds*, 4 Bro. P. C., 328; *Brace v. Dutchess of Marlborough*, 2 P. Wms., 495. And in this case the fund is equitable so far as the judgment creditors are concerned, the legal title being in the trustees for the security of the debt due to F. James & Co. which has a priority over the judgments.

*Coutts v. Walker*, 2 Leigh, is the other case. Green, J., delivering of opinion of the court, says:

"But although the equity of P. Coutts could not be taken in execution at law, it was upon the general principles of a court of equity, bound in equity, as it would have been bound at law, if it had been a legal title; and the judgment creditor has a right to insist upon the execution of the trust for the satisfaction of his judgments, precisely as the debtor would have a right to have it executed for his own benefit, if there had been no judgment. Thus a judgment creditor has a right to redeem a mortgage, or any other encumbrance. And, amongst encumbrances, where all having nothing but equities, their equities being equal, they are entitled to satisfaction accord-



ing to the priority of their encumbrances in point of time, upon the maxim, *qui prior est in tempore, potior est in jure*. Churchill v. Grove, Nels. Ch. R., 89; 1 Ch. Ca., 35; 2 Ch. R., 180; Mackreath v. Symonds, 15 Ves., 353; Haleys v. Williams, 1 Leigh, 140.

This was an interesting case, and the facts were these: Real estate was conveyed to a trustee by deed of marriage settlement, in trust out of the rents and profits to pay the wife an annuity, and, subject to the annuity in her favor, in trust for a son of the grantor. Whilst the wife is yet living, a creditor of the son recovers a judgment against him, and then files his bill in chancery to subject the son's equitable interest in the estate to the payment of the judgment.

It was held: 1. That the equitable interest of the son could not be taken in execution at law; 2. That it was, nevertheless, bound in equity by the judgment, and equity would apply it to the payment of the judgment; 3d. But, inasmuch as the annuitant was yet living, and not compellable to accept a gross sum in satisfaction of her annuity, and as the trustee was to hold the property and pay the annuity out of the profits, a court of chancery ought not to direct an out-and-out sale of the debtor's equitable interest subject to the annuity, but ought only to direct the application towards the judgment of the surplus profits, as they accrued, after paying the annuity to the wife.

The decree made at the special term is, therefore, affirmed.

**NOTE.**—The reader will find a very learned and able examination of the question of the distribution of the proceeds of an equity of redemption among judgment creditors in the report made by the auditor in this case and published in the WASHINGTON LAW REPORTER, vol. 3, No. 35. Precisely the same question was decided by this court in the subsequent case of Earle v. Dodge, the court affirming and following the ruling in Yates v. Seitz. In that case the auditor applied the whole fund to the payment of Earle's judgment which was prior in date to a money decree in favor of the Freedman's Savings and Trust Company, and excluded the latter entirely from participation. Exceptions were filed and overruled by the Special Term, and, on appeal, the decree was affirmed by the General Term, on the 10th December, 1880, Justices CARTER and WYLLIE sitting. In Poole & Hume v. Daly, 1 Mackey, 460, decided April 7, 1882, Mr. Justice COX delivering the opinion of the court, expressed some doubt as to the correctness of the rule theretofore followed by the court in recognizing priorities of judgments in cases where the proceeds of an equity of redemption were distributed by the chancellor. The question, however, was not directly before the court, as the case was decided upon other grounds.—F. H. M.

## United States Supreme Court.

Nos. 1, 2, 3, 26, 28.—OCTOBER TERM, 1883.

THE UNITED STATES, Plaintiff, v. MURRAY STANLEY. No. 1.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the District of Kansas.*

THE UNITED STATES, Plaintiff in Error, v. MICHAEL RYAN. No. 2.

*In Error to the Circuit Court of the United States for the District of California.*

THE UNITED STATES, Plaintiff, v. SAMUEL NICHOLS. No. 3.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Western District of Missouri.*

THE UNITED STATES, Plaintiff, v. SAMUEL D. SINGLETON. No. 26.

*On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Southern District of New York.*

RICHARD A. ROBINSON and SALLIE J. ROBINSON, his Wife, Plaintiffs in Error, v. THE MEMPHIS AND CHARLESTON RAILROAD CO. No. 28.

*In Error to the Circuit Court of the United States for the Western District of Tennessee.*

Mr. Justice HARLAN dissenting:

The opinion in these cases proceeds, as it seems to me, upon grounds entirely too narrow and artificial. The substance and spirit of the recent Amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. "It is not the words of the law, but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul. Constitutional provisions, adopted in the interest of liberty, and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law. By this I do not mean that the determination of these cases should have been materially controlled by considerations of mere expediency or policy. I mean only, in this form, to express an earnest conviction that the court has departed from the familiar rule requiring, in the interpretation of Constitutional provisions, that full effect be given to the intent with which they were adopted.

The purpose of the first section of the act of Congress of March 1, 1875, was to prevent

race discrimination. It does not assume to define the general conditions and limitations under which inns, public conveyances, and places of public amusement may be conducted, but only declares that such conditions and limitations, whatever they may be, shall not be applied, by way of discrimination on account of race, color, or previous condition of servitude. The second section provides a penalty against any one denying, or aiding or inciting the denial, to any citizen that equality of right given by the first section, except for reasons by law applicable to citizens of every race or color and regardless of any previous condition of servitude.

There seems to be no substantial difference between my brethren and myself as to what was the purpose of Congress; for, they say that the essence of the law is, not to declare broadly that all persons shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances and theatres; but that such enjoyment shall not be subject to any conditions applicable only to citizens of a particular race or color, or who had been in a previous condition of servitude. The effect of the statute, the court says, is, that colored citizens, whether formerly slaves or not, and citizens of other races, shall have the same accommodations and privileges in all inns, public conveyances and places of amusement as are enjoyed by white persons; and *vice versa*.

The court adjudges that Congress is without power, under either the Thirteenth or Fourteenth Amendment, to establish such regulations, and that the first and second sections of the statute are, in all their parts, unconstitutional and void.

Before considering the particular language and scope of these amendments, it will be proper to recall the relations which, prior to their adoption, subsisted between the national government and the institution of slavery, as indicated by the provisions of the Constitution, the legislation of Congress, and the decisions of this court. In this mode we may obtain keys with which to open the mind of the people, and discover the thought intended to be expressed.

In section 2 of article 4 of the Constitution it was provided that "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." Under the authority of that clause Congress

passed the fugitive slave law of 1793, establishing the mode for the recovery of a fugitive slave, and prescribing a penalty against any person knowingly and willingly obstructing or hindering the master, his agent or attorney, in seizing, arresting and recovering the fugitive, or who should rescue the fugitive from him, or who should harbor or conceal the slave after notice that he was a fugitive.

In *Prigg v. Commonwealth of Pennsylvania*, 16 Pet., 539, this court had occasion to define the powers and duties of Congress in reference to fugitives from labor. Speaking by Mr. Justice Story, the court laid down these propositions:

That a clause of the Constitution conferring a right should not be so construed as to make it shadowy, or unsubstantial, or leave the citizen without a remedial power adequate for its protection, when another mode, equally accordant with the words and the sense in which they were used, would enforce and protect the right so granted;

That Congress is not restricted to legislation for the exertion of its powers expressly granted; but, for the protection of rights guaranteed by the Constitution, it may employ, through legislation, such means, not prohibited, as are necessary and proper, or such as are appropriate, to attain the ends proposed;

That the Constitution recognized the master's right of property in his fugitive slave, and, as incidental thereto, the right of seizing and recovering him, regardless of any state law or regulation, or local custom whatsoever; and,

That the right of the master to have his slave, so escaping, delivered up on claim, being guaranteed by the Constitution, the fair implication was, that the national Government was clothed with appropriate authority and functions to enforce it.

The court said: "The fundamental principle, applicable to all cases of this sort, would seem to be that when the end is required the means are given, and when the duty is enjoined the ability to perform it is contemplated to exist on the part of the functionary to whom it is entrusted." Again: "It would be a strange anomaly and forced construction to suppose that the national government meant to rely for the due fulfillment of its own proper duties, and the rights which it intended to secure, upon state legislation, and not upon that of the Union. *A fortiori*, it would be more objectionable to suppose that a power, which was to be the same throughout the Union, should be confided to state sovereignty, which could not rightfully act beyond its own territorial limits."

The act of 1793 was, upon these grounds, adjudged to be a Constitutional exercise of the powers of Congress.

It is to be observed from the report of *Prigg's* case that Pennsylvania, by her attorney-general, pressed the argument that the obligation to surrender fugitive slaves was on the states and for the states, subject to the restriction that they should not pass laws or establish regulations liberating such fugitives; that the Constitution did not take from the states the right to determine the status of all persons within their respective jurisdictions; that it was for the state in which the alleged fugitive was found to determine, through her courts or in such modes as she prescribed, whether the person arrested was, in fact, a freeman or a fugitive slave; that the sole power of the general government in the premises was, by judicial instrumentality, to restrain and correct, not to forbid and prevent in the absence of hostile state action; and that, for the general government to assume primary authority to legislate on the subject of fugitive slaves, to the exclusion of the states, would be a dangerous encroachment on state sovereignty. But to such suggestions this court turned a deaf ear, and adjudged that primary legislation by Congress to enforce the master's right was authorized by the Constitution.

We next come to the fugitive slave act of 1850, the constitutionality of which rested, as did that of 1793, solely upon the implied power of Congress to enforce the master's rights. The provisions of that act were far in advance of previous legislation. They placed at the disposal of the master seeking to recover his fugitive slave, substantially, the whole power of the nation. It invested commissioners, appointed under the act, with power to summon the *posse comitatus* for the enforcement of its provisions, and commanded 'all good citizens' to assist in its prompt and efficient execution whenever their services were required as part of the *posse comitatus*. Without going into the details of that act it is sufficient to say that Congress omitted from it nothing which the utmost ingenuity could suggest as essential to the successful enforcement of the master's claim to recover his fugitive slave. And this court, in *Ableman v. Booth*, 21 How., 256, adjudged it to be "in all of its provisions fully authorized by the Constitution of the United States."

The only other decision, prior to the adoption of the recent amendments, to which reference will be made, is *Dred Scott v. Sandford*, 19 How., 399. That suit was instituted in a circuit court of the United States by Dred

Scott, claiming to be a citizen of Missouri, the defendant being a citizen of another state. Its object was to assert the title of himself and family to freedom. The defendant pleaded in abatement to the jurisdiction of the court that Scott—being of African descent, whose ancestors, of pure African blood, were brought into this country and sold as slaves—was not a citizen. The only matter in issue, said the court, was whether the descendants of slaves so imported and sold, when they should be emancipated, or who were born of parents who had become free before their birth, are citizens of a state in the sense in which the word 'citizen' is used in the Constitution of the United States.

In determining that question the court instituted an inquiry as to who were citizens of the several states at the adoption of the Constitution, and who, at that time, were recognized as the people whose rights and liberties had been violated by the British government. The result was a declaration, by this court speaking through Chief Justice Taney, that the legislation and histories of the times, and the language used in the Declaration of Independence, showed "that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that instrument;" that "they had for more than a century before been regarded as beings of an inferior race, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit;" that he was "bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it;" and, that "this opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without for a moment doubting the correctness of this opinion."

The judgment of the court was that the words "people of the United States" and "citizens," meant the same thing, both describing "the political body who, according to our republican institutions, form the sovereignty and hold the power and conduct the

government through their representatives;" that "they are what we familiarly call the 'sovereign people,' and every citizen is one of this people and a constituent member of this sovereignty;" but, that the class of persons described in the plea in abatement did not compose a portion of this people, were not "included, and were not intended to be included, under the word, 'citizens' in the Constitution;" that, therefore, they could "claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States;" that, "on the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them."

Such were the relations which, prior to the adoption of the Thirteenth Amendment, existed between the government, whether national or state, and the descendants, whether free or in bondage, of those of African blood, who had been imported into this country and sold as slaves.

The first section thereof provides that "neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Its second section declares that "Congress shall have power to enforce this article by appropriate legislation." This amendment was followed by the Civil Rights Act of April 9, 1866, which, among other things, provided that "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." 14 Stat., 27. The power of Congress, in this mode, to elevate the race thus liberated to the plane of national citizenship, was maintained by the supporters of the act of 1866 to be as full and complete as its power, by general statute, to make the children, being of full age, of persons naturalized in this country, citizens of the United States without going through the process of naturalization. The act of 1866, in this respect, was also likened to that of 1843, in which Congress declared "that the Stockbridge tribe of Indians, and each and every one of them, shall be deemed to be, and are hereby declared to be, citizens of the United States to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall in all

respects be subject to the laws of the United States." If the act of 1866 was valid, as conferring national citizenship upon all embraced by its terms, then the colored race, liberated by the Thirteenth Amendment, became citizens of the United States prior to the adoption of the Fourteenth Amendment. But, in the view which I take of the present case, it is not necessary to examine this question.

The terms of the Thirteenth Amendment are absolute and universal. They embrace every race which then was, or might thereafter be, within the United States. No race, as such, can be excluded from the benefits or rights thereby conferred. Yet, it is historically true that that Amendment was suggested by the condition, in this country, of that race which had been declared by this court, to have had—according to the opinion entertained by the most civilized portion of the white race at the time of the adoption of the Constitution—"no rights which the white man was bound to respect," none of the privileges or immunities secured by that instrument to citizens of the United States. It had reference, in a peculiar sense, to a people which (although the larger part of them were in slavery) had been invited by an act of Congress to aid, by their strong right arms, in saving from overthrow a government which, theretofore, by all of its departments, had treated them as an inferior race, with no legal rights or privileges except such as the white race might choose to grant them.

These are the circumstances under which the Thirteenth Amendment was proposed for adoption. They are now recalled only that we may better understand what was in the minds of the people when that Amendment was being considered, and what were the mischiefs to be remedied, and the grievances to be redressed.

We have seen that the power of Congress, by legislation, to enforce the master's right to have his slave delivered up on claim was *implied* from the recognition and guaranty of that right in the national Constitution. But the power conferred by the Thirteenth Amendment does not rest upon implication or inference. Those who framed it were not ignorant of the discussion, covering many years of the country's history, as to the Constitutional power of Congress to enact the fugitive slave laws of 1793 and 1850. When, therefore, it was determined, by a change in the fundamental law, to uproot the institution of slavery wherever it existed in this land, and to establish universal freedom, there was a fixed purpose to place the power of Congress in the premises beyond the possibility of doubt.

Therefore, *ex industria*, the power to enforce the Thirteenth Amendment, by appropriate legislation, was expressly granted. Legislation for that purpose, it is conceded, may be direct and primary. But to what specific ends may it be directed? This court has uniformly held that the national Government has the power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution. *United States v. Reese*, 92 U. S., 214; *Strauder v. West Virginia*, 100 U. S., 300. That doctrine ought not now to be abandoned when the inquiry is not as to an implied power to protect the master's rights, but what may Congress do, under powers expressly granted, for the protection of freedom and the rights necessarily inhering in a state of freedom.

The Thirteenth Amendment, my brethren concede, did something more than to prohibit slavery as an institution, resting upon distinctions of race, and upheld by positive law. They admit that it established and decreed universal *civil freedom* throughout the United States. But did the freedom, thus established, involve nothing more than exemption from actual slavery? Was nothing more intended than to forbid one man from owning another as property? Was it the purpose of the nation simply to destroy the institution, and then remit the race, theretofore held in bondage, to the several states for such protection, in their civil rights, necessarily growing out of freedom, as those states, in their discretion, choose to provide? Were the states, against whose solemn protest the institution was destroyed, to be left perfectly free, so far as national interference was concerned, to make or allow discriminations against that race, as such, in the enjoyment of those fundamental rights that inhere in a state of freedom? Had the Thirteenth Amendment stopped with the sweeping declaration, in its first section, against the existence of slavery and involuntary servitude, except for crime, Congress would have had the power, by implication, according to the doctrines of *Prigg v. Commonwealth of Pennsylvania*, repeated in *Strauder v. West Virginia*, to protect the freedom thus established, and, consequently, to secure the enjoyment of such civil rights as were fundamental in freedom. But that it can exert its authority to that extent is now made clear, and was intended to be made clear, by the express grant of power contained in the second section of that Amendment.

That there are burdens and disabilities which constitute badges of slavery and servitude, and that the express power delegated to Congress to enforce, by appropriate legisla-

tion, the Thirteenth Amendment, may be exerted by legislation of a direct and primary character, for the eradication, not simply of the institution, but of its badges and incidents, are propositions which ought to be deemed indisputable. They lie at the very foundation of the Civil Rights Act of 1866. Whether that act was fully authorized by the Thirteenth Amendment alone, without the support which it afterwards received from the Fourteenth Amendment, after the adoption of which it was re-enacted with some additions, the court, in its opinion, says it is unnecessary to inquire. But I submit, with all respect to my brethren, that its constitutionality is conclusively shown by other portions of their opinion. It is expressly conceded by them that the Thirteenth Amendment established freedom; that there are burdens and disabilities, the necessary incidents of slavery, which constitute its substance and visible form; that Congress, by the act of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to remove certain burdens and disabilities, the necessary incidents of slavery, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell, and convey property as is enjoyed by white citizens; that under the Thirteenth Amendment Congress has to do with slavery and its incidents; and that legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not. These propositions being conceded, it is impossible, as it seems to me, to question the constitutional validity of the Civil Rights Act of 1866. I do not contend that the Thirteenth Amendment invests Congress with authority, by legislation, to regulate the entire body of the civil rights which citizens enjoy, or may enjoy, in the several states. But I do hold that since slavery, as the court has repeatedly declared, was the moving or principal cause of the adoption of that amendment, and since that institution rested wholly upon the inferiority, as a race, of those held in bondage, their freedom necessarily involved immunity from, and protection against, all discrimination against them, because of their race, in respect of such civil rights as belong to freemen of other races. Congress, therefore, under its express power to enforce that

amendment by appropriate legislation, may enact laws to protect that people against the deprivation, *on account of their race*, of any civil rights enjoyed by other freemen in the same state; and such legislation may be of a direct and primary character, operating upon states, their officers and agents, and, also, upon, at least, such individuals and corporations as exercise public functions and wield power and authority under the state.

By way of testing the correctness of this position, let us suppose that, prior to the adoption of the Fourteenth Amendment, a state had passed a statute denying to freemen of African descent, resident within its limits, the same rights which were accorded to white persons, of making or enforcing contracts, or of inheriting, purchasing, leasing, selling and conveying property; or a statute subjecting colored people to severer punishment for particular offences than was prescribed for white persons, or excluding that race from the benefit of the laws exempting homesteads from execution. Recall the legislation of 1865-6 in some of the states, of which this court, in the Slaughter-House Cases, said, that it imposed upon the colored race onerous disabilities and burdens; curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value; forbade them to appear in the towns in any other character than menial servants; required them to reside on and cultivate the soil, without the right to purchase or own it; excluded them from many occupations of gain; and denied them the privilege of giving testimony in the courts where a white man was a party. 16 Wall., 57. Can there be any doubt that all such legislation might have been reached by direct legislation upon the part of Congress under its express power to enforce the Thirteenth Amendment? Would any court have hesitated to declare that such legislation imposed badges of servitude in conflict with the civil freedom ordained by that Amendment? That it would have been also in conflict with the Fourteenth Amendment because inconsistent with the fundamental rights of American citizenship, does not prove that it would have been consistent with the Thirteenth Amendment.

What has been said is sufficient to show that the power of Congress under the Thirteenth Amendment is not necessarily restricted to legislation against slavery as an institution upheld by positive law, but may be exerted to the extent, at least, of protecting the race, so liberated, against discrimination, in respect of legal rights belonging to freemen, where such discrimination is based upon race.

It remains now to enquire what are the legal rights of colored persons in respect of the accommodations, privileges and facilities of public conveyances, inns and places of public amusement?

First, as to public conveyances on land and water. In *New Jersey Steam Navigation Co. v. Merchants' Bank*, 6 How., 382, this court, speaking by Mr. Justice Nelson, said that a common carrier is "in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned." To the same effect is *Munn v. Illinois*, 94 U. S., 130. In *Olcott v. Supervisors*, 16 Wall., 694, it was ruled that railroads are public highways, established, by authority of the state, for the public use; that they are none the less public highways, because controlled and owned by private corporations; that it is a part of the function of government to make and maintain highways for the conveyance of the public; that no matter who is the agent, and what is the agency, the function performed is *that of the state*; that although the owners may be private companies, they may be compelled to permit the public to use these works in the manner in which they can be used; that, upon these grounds alone, have the courts sustained the investiture of railroad corporations with the state's right of eminent domain, or the right of municipal corporations, under legislative authority, to assess, levy and collect taxes to aid in the construction of railroads. So, in *Township of Queensbury v. Culver*, 19 Wall., 91, it was said, that a municipal subscription of railroad stock was in aid of the construction and maintenance of a public highway, and for the promotion of a public use. Again, in *Township of Pine Grove v. Talcott*, 19 Wall., 676: "Though the corporation [railroad] was private, its work was public, as much so as if it were to be constructed by the state." To the like effect are numerous adjudications in this and the state courts with which the profession is familiar. The Supreme Judicial Court of Massachusetts, in *Inhabitants of Worcester v. The Western R. R. Corporation*, 4 Met., 566, said, in reference to a certain railroad: "The establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike, or highway, a public easement. . . . It is true that the real and personal property, necessary to the establishment and management of the railroad is vested

in the the corporation; but it is in trust for the public." In *Erie County v. Casey*, 26 Penn. St., 287, the court, referring to an act repealing the charter of a railroad, and under which the state took possession of the road, said, speaking by Black, J.: "It is a public highway, solemnly devoted to public use. When the lands were taken it was for such use, or they could not have been taken at all. . . . Railroads established upon land taken by the right of eminent domain by authority of the commonwealth, created by her laws as thoroughfares for commerce, are her highways. No corporation has property in them, though it may have franchises annexed to and exercisable within them." In many courts it has been held that because of the public interest in such a corporation the land of a railroad company cannot be levied on and sold under execution by a creditor. The sum of the adjudged cases is that a railroad corporation is a governmental agency, created primarily for public purposes, and subject to be controlled for the public benefit. It is upon that ground that the state, when unfettered by contract, may regulate, in its discretion, the rates of fares of passengers and freight. And upon this ground, too, the state may regulate the entire management of railroads in all matters affecting the convenience and safety of the public, as, for example, by regulating speed, compelling stops of prescribed length at stations, and prohibiting discriminations and favoritism. If the corporation neglect or refuse to discharge its duties to the public, it may be coerced to do so by appropriate proceedings in the name or in behalf of the state.

Such being the relations these corporations hold to the public, it would seem that the right of a colored person to use an improved public highway, upon the terms accorded to freemen of other races, is as fundamental in the state of freedom, established in this country, as are any of the rights which my brethren concede to be so far fundamental as to be deemed the essence of civil freedom. "Personal liberty consists," says Blackstone, "in the power of locomotion, of changing situation, or removing one's person to whatever places one's own inclination may direct, without restraint, unless by due course of law." But of what value is this right of locomotion, if it may be clogged by such burdens as Congress intended by the act of 1875 to remove. They are burdens which lay at the very foundation of the institution of slavery as it once existed. They are not to be sustained, except upon the assumption that there is still, in this land of universal liberty, a class which may yet be discriminated against, even in respect of

rights of a character so essential and so supreme, that, deprived of their enjoyment, in common with others, a freeman is not only branded as one inferior and infected, but, in the competitions of life is robbed of some of the most necessary means of existence; and all this solely because they belong to a particular race which the nation has liberated. The Thirteenth Amendment alone obliterated the race line so far as all rights fundamental in a state of freedom are concerned,

*(To be concluded next week.)*

## The Courts.

### U. S. Supreme Court Proceedings.

Nov. 12, 1883.

The following persons were admitted to practice:

John Goode, of Norfolk, Va.; Sidney M. Ninde, of Fort Wayne, Ind.; Robert B. Lines, of Washington, D. C.

No. 75. Michael Retzer, plaintiff in error, v. Alfred M. Wood, collector, &c. In error to the circuit court of the United States for the southern district of New York. Judgment reversed with costs and cause remanded with directions to enter judgment for plaintiff for \$61.30, with interest and costs. Opinion by Mr. Justice Blatchford.

No. 94. Charles A. Snyder, appellant, v. Morris Marks, collector, &c. Appeal from the circuit court of the United States for the district of Louisiana. Decree affirmed with costs; cause remanded. Opinion by Mr. Justice Blatchford.

No. 92. George D. Cragin, plaintiff in error, v. William S. Lovell, executor, &c. In error to the circuit court of the United States for the eastern district of Louisiana. Judgment reversed with costs and cause remanded; and

No. 93. George D. Cragin, appellant, v. William S. Lowell, executor, &c. Appeal from the circuit court of the United States for the eastern district of Louisiana. Decree affirmed with costs and cause remanded. Opinion by Mr. Justice Gray.

No. 57. The United States, appellant, v. Francis A. Gibbons, jr. Appeal from Court of Claims. Judgment affirmed. Opinion by Mr. Justice Matthews.

No. 95. Edward R. Booth, jr., et al., heirs-at-law of Edward R. Booth, deceased, plaintiffs in error, v. John M. Tiernan. In error to the circuit court of the United States for the northern district of Illinois. Judgment affirmed with costs. Opinion by Mr. Justice Matthews.

No. 91. The New Orleans National Banking Association et al., appellants, v. John I. Adams et al. Appeal from the circuit court of the United States for the eastern district of Louisiana. Decree affirmed with costs and cause remanded. Opinion by Mr. Justice Woods.

No. 58. Salmon S. Matthews, plaintiff in error, v. Thaddeus Densmore et al. In error to the supreme court of the State of Michigan. Judgment reversed with costs, and cause remanded with instructions for further proceedings to be had therein in conformity to the opinion of this court. Opinion by Mr. Justice Miller.



No. 997. The Board of Liquidation of the City Debt, appellant, v. The Louisville & Nashville Railroad Co. et al. Appeal from the circuit court of the United States for the eastern district of Louisiana. Decree affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 7. The City of New Orleans, appellant, v. The New Orleans, Mobile & Texas Railroad Co. Appeal from the circuit court of the United States for the eastern district of Louisiana. Dismissed with costs and remanded. Opinion by Mr. Chief Justice Waite.

No. 4. The County Court of Knox County et al., plaintiffs in error, v. the United States, ex rel. George W. Harshman.

No. 80. The County Court of Knox County et al., plaintiffs in error, v. the United States, ex rel. Samuel C. Davis.

No. 81. The County Court of Knox County et al., plaintiffs in error, v. the United States, ex rel. the Wells & French Co. Error to the circuit court of the United States for the eastern district of Missouri.

No. 83. The Macon County Court et al., plaintiffs in error, v. Alfred Huidekoper, relator. In error to the circuit court of the United States for the western district of Missouri; and

No. 199. Thomas C. Baker, Treasurer of Knox County, Mo., plaintiff in error, v. the United States, ex rel. Samuel C. Davis. In error to the circuit court of the United States for the eastern district of Missouri. Judgments affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 31. Mary Boro et al., plaintiffs in error, v. the County of Phillips, State of Arkansas. In error to the district court of the United States for the eastern district of Arkansas. Judgments affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 77. The Town of Berlin, plaintiff in error, v. John G. McCullough, administrator, &c. In error to the circuit court of the United States for the northern district of New York. Affirmed with costs by a divided court.

No. 130. The Alabama Gold Life Insurance Co., plaintiff in error, v. Mary Alice Nichols, in her own behalf and as guardian, &c. In error to the circuit court of the United States for the eastern district of Texas. Dismissed for want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 314. William Ward et al., appellants, v. George W. Berlin. Appeal from the circuit court of the United States for the western district of Virginia. Dismissed with costs. Opinion by Mr. Chief Justice Waite.

No. 9. Original ex parte. In the matter of Harriet G. Mead, executrix, &c., petitioner. Petition for mandamus. Rule to show cause denied and petition dismissed. Opinion by Mr. Chief Justice Waite.

No. 88. Nathaniel Wilson, administrator, &c., plaintiff in error, v. Josephine C. Arrick, administratrix, &c. Motion to dismiss denied and new citation ordered. Announced by Mr. Chief Justice Waite.

No. 1038. John A. Dushane et al., plaintiff in error, v. Joseph Benedict; motion to dismiss submitted.

No. 104. Stephen Percy Ellis et al., appellant, v. Jefferson Davis. Argument concluded.

No. 107. Frederika Wolff, executrix, &c., appellant, v. John Gerlach. Argued.

No. 110. The American File Co. et al., appellants, v. John W. Garrett et al.; and

No. 111. William F. Sayles et al., appellants, v. John W. Garrett et al.

No. 112. The Illinois Central Railroad Co., appellant, v. Laura B. Turrill, administratrix; and

No. 113. The Michigan Southern and Northern Indiana Railroad Co., appellants, v. Laura B. Turrill, administratrix, &c. Passed on account of sickness of counsel.

Nov. 13, 1883.

John C. Shea, and E. Molyneaux, of Washington, D. C., were admitted to practice.

No. 10. Original ex parte. In the matter of George A. Von Lingen et al., petitioners; and

No. 11. Original ex parte. In the matter of George A. Von Lingen et al., petitioners. Motion for rules to show cause submitted.

No. 798. Belle M. Smoot and E. J. Smoot, plaintiffs in error, v. the Kentucky Central Railroad Co. In error to the circuit court of the United States for the district of Kentucky. Dismissed.

No. 168. Seth H. Kellogg, appellant, v. the United States. Appeal from Court of Claims. Dismissed pursuant to sixteenth rule.

No. 109. Arthur W. Sweeny, appellant, v. the United States. Submitted by Mr. T. W. Bartley for the appellant, with leave to counsel for appellee to file brief within ten days, &c.

No. 114. Edward L. Keyes, appellant, v. the United States. Submitted.

No. 117. James A. Whalen, plaintiff in error, v. Philip H. Sheridan. In error to the circuit court of the United States for the southern district of New York. Dismissed with costs pursuant to sixteenth rule.

No. 119. The New England Mutual Life Insurance Co., plaintiff in error, v. S. E. Woodworth, administrator, &c. Passed on account of sickness of counsel.

No. 120. Mrs. G. C. McCulloch, widow, et al., appellants, v. the New Orleans Gas Light Co. Submitted.

No. 121. William Flash et al., plaintiffs in error, v. Adna C. Conn; and

No. 122. J. I. Adams et al., plaintiffs in error, v. Adna C. Conn. Argued.

No. 118. James and Charlotte Bendy, appellants, v. Amos Townsend et al. Argued.

Nov. 14, 1883.

C. W. Holcomb, of Washington, D. C., was admitted to practice.

No. 1208. James Crawford et al., plaintiffs in error, v. Granville O. Haller. In error to the supreme court of Washington Territory. Docketed and dismissed with costs.

No. 123. The Terre Haute & Indianapolis Railroad Co., plaintiff in error, v. Isaac G. Struble. Argued.

No. 124. The Perfection Window Cleaner Co., appellant, v. Daniel W. Bosley. Argued and submitted.

No. 125. Rissa J. Warner et al., appellants, v. The Connecticut Mutual Life Insurance Co. Argued.

No. 126. J. A. Fay & Co., appellants, v. Cordesman Bros. Argument commenced.

Nov. 15, 1883.

Andrew B. Duvall, of Washington, D. C., was admitted to practice.

No. 926. The Memphis Gas Light Co., plaintiff in error, v. The Taxing District of Shelby county, Tennessee. Submitted under twentieth rule.



No. 1210. Joseph H. Gibson, appellant, v. Charles Bartles, jr. Appeal from the circuit court of the United States for the western district of Wisconsin. Docketed and dismissed with costs.

No. 126. J. A. Fay & Co., appellants, v. Cordesman Bros. Argument concluded.

No. 127. W. J. Smith et al., plaintiffs in error, v. Malcolm McNeal et al. Argument commenced.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

Nov. 12, 1883.

Fayolle v. Texas Pacific Railroad Co. Decree below affirmed.

Ullrich v. Ullrich. Decree below modified.

Mercer et al. v. Hogan et al.

Nov. 13, 1883.

Mercer et al. v. Hogan et al. On hearing.

Nov. 14, 1883.

Langhorn v. Evans. Appeal. Bond fixed in the sum of \$15,000.

Marshall v. Main. On hearing.

Nov. 15, 1883.

Marshall v. Main. Argued and submitted.

United States, ex rel. James H. Elgin, v. W. W. Upton. Partially heard.

#### CIRCUIT COURT.—Justice Mac Arthur.

Nov. 12, 1883.

Fifth Baptist Church v. Baltimore & Potomac Railroad Co. On hearing.

Nov. 13, 1883.

Fifth Baptist Church v. Baltimore & Potomac Railroad Co. Verdict for plaintiff for \$4,000.

Nov. 14, 1883.

Herring v. District of Columbia. Jury out, with directions to bring in a sealed verdict.

Fifth Baptist Church v. Baltimore & Potomac Railroad Co. Motion for a new trial filed.

Nov. 15, 1883.

Herring v. District of Columbia. Verdict for plaintiff for \$800. Notice of a motion for a new trial.

Tankenbergh v. Weyl. Verdict for plaintiff for the full amount claimed.

Green, executrix, v. Stone. Suit discontinued by plaintiff.

Fitzmorris v. Nelligan. Judgment by default.

Jones v. Baltimore & Ohio Railroad Co. On trial.

#### EQUITY COURT.—Justice Hagner

Nov. 12, 1883.

Coombs v. Coombs. Rule on defendant returnable November 15.

Binney v. Binney. Commission ordered to get answer of infants.

Jarboe v. O'Neill. Walter Brooks admitted as party, and rule on O'Neill returnable November 19.

Hockmeyer v. Newmeyer. Testimony ordered taken before Examiner Howard M. Norris.

Kirby v. Chew. Testimony ordered taken before Examiner Louis A. Dent.

Roy v. Roys. Motion for dissolution of injunction overruled. Cross-examination of witness Pulman ordered stricken from the record, and further cross-examination to be in open court.

Mason v. Deacon. Testimony overruled, with leave to answer.

Wagner v. Evans. Testimony ordered taken before Examiner C. L. Hine.

Nov. 13, 1883.

F. S. & T. Co. v. Brooks. Sale ratified nisi.

Marshall v. Marshall. Same.

Bower v. Herth. Sale ratified finally.

McNamara v. Collins. Bill dismissed without prejudice.

Ridenour v. McClelland. Sale ratified nisi.

McDermott v. McDermott. Sale ratified finally and cause referred to the auditor.

Marks v. Main. Deed from William H. Main to Elizabeth Bell allowed read in evidence.

Harkness v. Regan. Reference to auditor ordered.

Kirby v. Shaw. Substitution of trustee.

Marks v. Main. On hearing.

Nov. 14, 1883.

In re lunacy Arthur C. Pickrell. Reference to the auditor.

Hilton v. Devlin. Order admitting Frank W. Hackett as a party defendant.

Hoffman v. Callan. Sale finally ratified.

Robinson v. Kurtz. Appearance of absent defendant ordered.

Nov. 15, 1883.

Williamson v. Walsh. Testimony ordered taken before examiner John Cruikshank.

Marshall v. Marshall. Auditor's report ratified and sale of notes authorized.

Bomar v. Bomar. Commission ordered to take testimony in District of Columbia.

S. C. Ackerman v. Ackerman. Allowance pendente lite and counsel fees granted.

Schaefer v. Sellhausen. Sale by trustees ordered.

Benjamin v. Benjamin. Testimony ordered taken before Examiner H. A. Elliott.

Sunderland v. Alley et al. Pro confesso against defendant Thomas Sunderland granted.

Weggeman v. Weggeman. Auditor's report ratified.

Barbour v. Leddy, and Leddy v. Leddy. Leave to J. L. Barbour to file petition.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

Nov. 12, 1883.

24876. Thomas S. Huntley, Executor, v. Bradley Barlow. Account, \$78,657.94. Pliffs atty, N. Wilson.

24877. The W. W. Kimball Co. v. Andrew J. Benton. Note, \$176.79. Pliffs attys, Abert & Warner.

Nov. 13, 1883.

24878. Adrian Oudesluis et al. v. Robert E. Doyle. Note and account, \$679.99. Plif attys, Edwards & Barnard.

Nov. 14, 1883.

24879. The United States to the use of Henry S. Davis v. Nathan O. Draper et al. Bond, \$2,000. Pliffs attys, Riddle, Davis & Padgett.

24880. Henry S. Davis v. Nathan O. Draper et al. Bond, \$1,000. Pliffs attys, Riddle, Davis & Padgett.

24881. Sayles J. Bowen v. Susan A. Shelby. Certiorari. Defs attys, Carnal & Miller.

24882. John A. Baker v. John W. Gray. Certiorari. Pliffs atty, B. G. Lovejoy. Defs atty, A. H. Jackson.

24883. John Devlin & Co. v. H. Rosenbaum & Son. Acc't., \$79.63. Pliffs attys, Ross & Dean.

24884. The United States of America v. James H. Nelson et al. Bond, \$20,000. Pliffs atty, Geo. B. Corkhill.

24885. Wm. T. Dixon & Bro. v. Robert H. Hunter. Account, \$112.70. Pliffs atty, I. Williamson.

24886. Reuben B. Clark v. Thomas Banks. Note and account, \$604.31. Pliffs attys, Hine and Thomas.

24887. The Singer Manufacturing Co. v. Sarah Littleford. Replevin. Pliffs atty, L. H. Pike.

24888. Peter Fegan v. David A. Thompson. Judgment of Justice Bundy, \$57.53. Pliffs atty, S. T. Drury.  
 24889. John A. Baker v. John W. Gray. Account, rent, \$138. Pliffs atty, B. G. Lovejoy.  
 24890. Wimsatt & Uhler v. Leroy H. Carter. Judgment of Justice Bundy, \$99. Pliffs atty, W. J. Newton.  
 24891. John B. Kendall v. George W. Moore, Judgment of Justice Willson, \$34.

### IN EQUITY.—New Suits.

8782. William O. Barrett v. Mary E. Brown et al. To remove cloud off title. Com. sols., Gordon & Gordon.  
 8783. Leigh Robinson v. Dr. John Kurtz et al. To correct errors, ac. Com. sol., C. Robinson, jr.  
 8784. William McLean v. Samuel E. Lewis et al. To sell. Com. sols., Carusi & Miller.  
 8785. Emmett O. Adams v. Ephraim S. Stoddard et al. To annul an assignment. Com. sols., Hanley and Elliot.  
 8786. Max Lansburg v. Robert E. Hensault et al. Com. sol., L. Tobriner.  
 8787. Allen O. Clark v. Isaac Lyon et al. Injunction and account. Com. sols., Saville and Callaghan.

### PROBATE COURT.—Justice Hagner.

Estate of S. S. Leib; letters testamentary issued to Emma O. Clark on bond of \$3,000.  
 Estate of Sarah A. Kibbey; will admitted to probate and letters testamentary issued to John P. Franklin on bond of \$30,000.  
 Estate of Byron A. Kidder; will filed and order of publication issued.  
 Estate of Catharine Brown; order appointing F. H. Wright guardian to James G. Wright on bond of \$400.  
 Estate of William Martin; petition of Luther Martin for letters of administration filed.  
 In re John Golden, guardian; order directing additional bond to be filed.  
 Estate of Mary J. Stephens; order directing sale.  
 Estate of J. G. Stephenson; letters of administration issued to J. A. Nichols on bond of \$300.  
 Estate of W. G. H. Newman; will admitted to probate and record and letters testamentary issued to Mary E. Newman on special bond.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 14th day of November, 1883.

LEIGH ROBINSON, Complainant

DR. JOHN KURTZ, THOMAS KURTZ AND ANNA R. KURTZ HIS WIFE, JANE MOSHER SMOOT AND WILLIAM S. SMOOT HER HUSBAND, KATHERINE B. CHILDS AND ALLEN CHILDS HER HUSBAND, AND MINNIE H. KURTZ, Defendants.

No. 8788.  
Eq. Doc. 23.

It appearing to the court that none of said defendants can be found in this district:

On motion of the complainant, by Mr. Conway Robinson, jr., his solicitor, it is ordered that the defendants, Dr. John Kurtz, Thomas Kurtz and Anna R. Kurtz, his wife, Jane Mosher Smoot and William S. Smoot her husband, Katherine B. Childs and Allen Childs her husband, and Minnie H. Kurtz, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 463\* E. J. MILES, Clerk.

### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emily F. Sullivan, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of October, 1883.

HARRIOTT M. SULLIVAN.

GORDON & GORDON, Solicitors.

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### Legal Notices.

### THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William G. H. Newman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of November, 1883.

MARY A. NEWMAN,  
RAPHAEL O. GWYNN,  
Executor.

CHAS. A. ELLIOTT, Solicitor.

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IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 16, 1883.

In the matter of the Estate of Patrick Hanaphy, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by James Biggins.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
ANSON S. TAYLOR, Solicitor.

463

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 16, 1883.

In the matter of the Will of Byron A. Kidder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Thomas Greer.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
ANSON S. TAYLOR, Solicitor.

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IN THE SUPREME COURT OF THE DISTRICT OF Columbia,  
URTON H. RIDENOUR

No. 8660. Eq. Doc.

CHARLES E. McLELLAND ET AL.  
The trustee in this cause having reported the sale of the property in the county of Washington mentioned in said cause to Charles R. Vernon, for seventeen hundred and ten dollars, it is, this thirteenth day of November, A. D. 1883, ordered, that the sale reported be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the fifteenth day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said fifteenth day of December, 1883.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 463 E. J. MILES, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia,  
F. S. AND T. COMPANY

Equity. No. 5,136.

JOSEPH BROOKS ET AL.

Upon consideration of the report of James T. Wormley, trustee of the sale of lot 4, in section 1, of the Barry Farm, to George W. Stickney, trustee, for \$301; it is, this 13th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 18th day of December, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice.

Truecopy. Test: 463 E. J. MILES, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William P. Copeland, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1883.

45-3 SARAH P. COPELAND, Administratrix.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John A. Schnopp, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1883.

45-3 CATHARINE SCHNOPP, Executrix, 622 4th street, s. w.

**THIS IS TO GIVE NOTICE.**

That the subscriber of Hamilton County, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Beckley, late of the city of Cincinnati, O, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1883.

FREBERRY & GREEN, Solicitors. J. C. THOMAS. 45-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 9, 1883.**

In the matter of the Will of Robert Payne, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by James Henning.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills. JOSEPH FORREST, Solicitor. 45-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of November, 1883.**

HENRY WALTER } No. 8,112. Equity Docket.

MINNA UHLMANN.

On motion of the plaintiff, by Mr. Leon Tobriner, his solicitor, it is ordered that the defendants, Minna Uhlmann, Robert Uhlmann, Charles F. Uhlmann, Theodore J. Uhlmann and George F. Uhlmann, cause their appearance to be entered herein to the original and supplemental bills herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice. True copy. 45-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of November, 1883.**

ELIZABETH R. HUTCHINS } No. 8746. Eq. Doc. No. 23.

FRANCIS J. HUTCHINS ET AL. On motion of the plaintiff, by Messrs. Carusi & Miller, her solicitors, it is ordered that the defendants, Francis J. Hutchins, Joseph Hutchins, Lullia Sherwood and Lawrence Sherwood, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice. A true copy. Test: 45-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

FRANK B. SMITH } No. 8,410. Equity.

SUSAN BURCH ET AL.

Job Barnard, trustee herein, having reported a sale of the east 20 feet front of lot 12, square 377, in the city of Washington, in the District of Columbia, to Mary Ecken, for \$10,925:

It is, this 7th day of November, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. A. B. HAGNER, Asso. Justice. A true copy. Test: 45-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

ROBERT PORTNER } No. 8,029. Equity.

JOHN H. LEONARD.

Upon consideration of the report of James L. Davis, trustee in this cause, of the sale of part of lot six (6), in square twenty-nine (29), to William Casley, for \$1,000, it is, by the court this fifth day of November, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 19th day of December, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice. A true copy. Test: 45-3 R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Augustus W. Schmitt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of November, 1883.

JOHN L. CROUSE. 45-3

GEORGE A. KING, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 9, 1883.**

In the matter of the Will and Odell of Thomas Swann, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Chas. Shirley Carter and James Lowmades.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 45-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 9, 1883.**

In the matter of the Estate of Albert Maugin Perrotet, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Charles C. Duncanson.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills. J. M. YZNAGA, Solicitor. 45-3

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Estate of John G. Stephenson, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jared C. Nichols.

All persons interested are hereby notified to appear in this court on Friday, the 14th day of December next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **463 H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Estate of Mary G. Harris, late of Washington City, in the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Gray, one of the next of kin of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**HANNA & JOHNSTON, Solicitors. 463**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the matter of the Will of Frances E. Berry, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary A. S. Cary.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**JAMES H SMITH, Solicitor. 463**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the case of Margaret O. Gantt, Administratrix of Matilda S. Smith, deceased, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 7th day of December A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **H. J. RAMSDELL, Register of Wills.**  
**ARTHUR T. BRICE, Solicitor. 463**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the matter of the Estate of Napoleon Hudlin, late of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by George C. Brown.

All persons interested are hereby notified to appear in this court on or before the 7th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**HENRY R. ELLIOTT, Solicitor. 463**

*Legal Notices.*

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Francis Wheatley, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2nd day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2nd day of November, 1883.

**CHARLES WHEATLEY,  
SAMUEL E. WHEATLEY,  
WALTER T. WHEATLEY,**  
Executors.

**GORDON & GORDON, Solicitors. 44-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. the 2nd day of November, A. D. 1883.**

In re estate of David Moore, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and of Codicil and for Letters Testamentary on the estate of the said deceased has this day been made by James L. Barbour.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will and Codicil should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**HANNA & JOHNSTON, Solicitors. 44-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 24th day of October, 1883.**

**AMOS BINNEY ET AL. } No. 8764. Eq. Doc. 25.**

**MARIANNE H. BINNEY ET AL. }**

The Marshal having returned the summons for the hereinafter named defendants, "Not to be found:"

On motion of the plaintiffs, by Mr. Fred. W. Jones, their solicitor, it is ordered that the defendants, Amelia Dawson, Brooke Dawson, Margaret J. Beall, Thomas S. Beall, Christiana Thomas, Harriet B. Chesley, Harriet De B. Scott, Edward Williams, John Chandler Smith, Leonard Mackall, Harriet M. Taylor, Margaretta M. Key, Mary S. Compton, William W. Mackall, Covington Mackall, Benj. F. Mackall, Anna M. May, Virginia McCabe, Robert M. Mackall, Benjamin Mackall, Ohas. M. Mackall, Richard L. Mackall and Mary J. Palmer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**  
A true copy. **43-6 Test: R. J. MEIGS, Clerk.**

**THIS IS TO GIVE NOTICE.**

That the subscriber of Richmond, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Adam, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of November, 1883.

**RICHARD ADAM, Executor.**  
**HENRY WISE GARNETT, Solicitor. 45-3**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the matter of the Will of Adam Dade, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Louisa Dade.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER, Justice.**  
Test: **H. J. RAMSDELL, Register of Wills.**  
**B. T. HANLEY, Solicitor. 46-3**

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of Huntley, Illinois, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles O. Huntley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1883.

THOMAS S. HUNTLEY.

NATHANIEL WILSON, Solicitor, 635 F Street. 44.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William O. Bamberger, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1883.

HANNAH BAMBERGER, 927 Md. Ave. S. W.

HAGNER & MADDOX, Solicitors. 44.3

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of James W. Frere, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of October, 1883.

44.3 JOHN J. JOHNSON, Administrator c. t. a.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas J. Abbott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 27th day of October, 1883.

WILLIAM B. WEBB,

DANIEL R. HAGNER,

Executors. 44.3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Dorette Rehm, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of October, 1883.

CHARLES WALTER, Executor.

CHARLES A. WALTER, Solicitor. 44.3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael Nash, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1883.

ANN M. NASH, Executrix.

E.D. WRIGHT, Solicitor. 44.3

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

CHARLES H. ARMES, Administrator of  
Emory W. Du Bose, deceased, com-  
plainant,

No. 3,734.

Equity Docket 23.

THOMAS C. DU BOSE ET AL., defend-  
ants.

On motion of the complainant, it is this eighth day of October, 1883, ordered, that the defendants, Thos. C. Du Bose, William H. B. Du Bose, Hester S. Huggins, Robert J. Huggins, Drucilla C. P. Hallford, J. G. Hallford, Wylie Skinner, O. S. Skinner, A. F. Skinner, N. E. Skinner, H. B. Skinner, W. M. Skinner, Martha J. Beasley, E. E. Galloway, and —Galloway, her husband, J. H. Beasley, T. S. Du Bose, R. E. B. Du Bose, J. L. R. Du Bose, E. M. L. Du Bose, Oscar Beverley Du Bose, Lucius Bellinger Du Bose, Nyeen Middleton Du Bose, William Perry Du Bose, Laurence J. Stokes, Elliott E. Stokes, Emilina L. Waite, Mary H. Paschall, T. R. Waite, W. V. Paschall, Albert Jordan, and —Jordan, his wife, W. W. Thompson, and —Thompson, his wife, and Frank H. Du Bose, cause their appearance to be entered in this cause on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice, &c.

A true Copy. Test: R. J. Meigs, Clerk.

By M. A. CLANCY Asst. Clerk. 44.3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphan's Court Business, November 2, 1883.**

In the matter of the Estate of Benjamin F. Neff, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Franklin G. Neff, of Philadelphia, Penn.

All persons interested are hereby notified to appear in this court on Friday, the 23rd day of November next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. ALEXANDER B. HAGNER, Justice.

Test: H. J. RAMSDALL, Register of Wills.

P. B. STILSON, Solicitor. 44.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Elizabeth Meller, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of November, 1883.

CHARLES MARSHALL,

Adm'r. c. t. a., 1029 Md. Ave., N. E. 44.3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 2nd day of November, 1883.**

MARY A. SUNDERLAND

No. 3736. Eq. Doe. 23.

JOHN B. ALLEY ET AL.

On motion of the plaintiff, by Mr. M. F. Morris, her solicitor, it is ordered that the defendant, William Sharos, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 44.3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

HARRIET E. MIDDLETON

No. 3,627. Equity Docket 23.

JOHN MIDDLETON ET AL.

To whom it may concern:

Take notice that pursuant to order of court passed in this cause on the 6th day of October, 1883, I shall proceed on Thursday next, November 8, 1883, at 6-30 o'clock p. m., of that day at the law office of E. D. Mussey, esq., No. 5th street, n. w., in Washington City, D. C., to take such testimony as may be produced by the plaintiff in support of her bill or any others interested in the same.

44.3 ALBERT HARPER, Examiner-in-Chancery.

# Washington Law Reporter

WASHINGTON - - - - - November 24, 1883

GEORGE B. CORKHILL - - - EDITOR

## NOTES OF CASES.

In *Winchester v. Steven's Point* (October 23, 1883; 17 Northw. Rep., 3), it was held that, in an action to recover damages for a nuisance in flooding plaintiff's premises, as distinguished from an action of trespass, it is not sufficient, for a plaintiff who has alleged title, to prove possession under claim of title, especially where an attempt has been made to prove title and failed; although it was conceded that if an adverse possession, sufficient under the Statute of Limitations, had been proved it would be sufficient.

In *Winkelmans v. Des Moines N. W. R. Co.* (Supm. Ct. Iowa, October 17, 1883; 17 Northw. Rep., 82), it was held that the destruction of a spring on a farm—by a railroad company in constructing its road through the farm—might be considered in estimating damages for the land taken as right of way.

In *Brazee v. Bryant* (1883; 16 Reporter, 146), the Supreme Court of Michigan, in an opinion by Cooley, J., held that under the statute absolutely prohibiting business and labor on Sunday, when it is not a work of necessity or charity, a sale of a horse on that day would not sustain an action for the price, unless the parties on another day concurred anew in the contract. Mere delay to repudiate it would be enough.

In this case the buyer of a horse kept it eight weeks and then returned it, saying it was not what the seller represented it to be. Held, that he could recover back his money because of the original sale having been on Sunday.

Compare 12 Abb. N. C., 436-458.

—*New York Daily Register.*

The taking of testimony by stenography without afterwards reading it over to the witness is criticised as an imperfect method.—[*People v. McKinney*. 1883. 49 Mich., 334.]

# United States Supreme Court.

Nos. 1, 2, 3, 26, 28.—OCTOBER TERM, 1883.

## THE CIVIL RIGHTS CASES.

*Dissenting Opinion of Mr. Justice Harlan.*

(Concluded from last week.)

*Second*, as to inns. The same general observations which have been made as to railroads are applicable to inns. The word "inn" has a technical legal signification. It means, in the act of 1875, just what it meant at common law. A mere private boarding-house is not an inn, nor is its keeper subject to the responsibilities, or entitled to the privileges of a common innkeeper. "To constitute one an innkeeper, within the legal force of that term, he must keep a house of entertainment or lodging for all travellers or wayfarers who might choose to accept the same, being of good character or conduct." *Radfield on Carriers, &c.*, § 575. Says Judge Story: "An innkeeper may be defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants. An innkeeper is bound to take in all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. . . . If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor. . . . They (carriers of passengers) are no more at liberty to refuse a passenger, if they have sufficient room and accommodations, than an innkeeper is to refuse suitable room and accommodations to a guest." Story on Bailments, § 475-6. Said Mr. Justice Coleridge in *Rex v. Ivens*, 7 Carrington & Payne, 213, (32 E. C. L., 495): "An indictment lies against an innkeeper who refuses to receive a guest, he having at the time room in his house; and either the price of the guest's entertainment being tendered to him, or such circumstances occurring as will dispense with that tender. This law is founded in good sense. The innkeeper is not to select his guests. He has no right to say to one, you shall come to my inn, and to another you shall not, as every one coming and conducting himself in a proper manner has a right to be received; and for this purpose innkeepers are a sort of public servants, they having in return a kind of privilege of entertaining travellers and supplying them with what they want."

These authorities are sufficient to show that a keeper of an inn is in the exercise of a quasi public employment. The law gives him special privileges and he is charged with cer-

tain duties and responsibilities to the public. The public nature of his employment forbids him from discriminating against any person asking admission as a guest on account of the race or color of that person.

*Third.* As to places of public amusement. It may be argued that the managers of such places have no duties to perform with which the public are, in any legal sense, concerned, or with which the public have any right to interfere; and, that the exclusion of a black man, from a place of public amusement, on account of his race, or the denial to him, on that ground, of equal accommodations at such places, violates no legal right for the vindication of which he may invoke the aid of the courts. My answer to that argument is, that places of public amusement, within the meaning of the act of 1875, are such as are established and maintained under direct license of the law. The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be—which I deny—that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude.

I also submit, whether it can be said—in view of the doctrines of this court as announced in *Munn v. State of Illinois*, 92 U. S., 123, and reaffirmed in 94 U. S., 178—that the management of places of public amusement is a purely private matter, with which government has no rightful concern. In the *Munn* case the question was whether the State of Illinois could fix, by law, the maximum of charges for the storage of grain in certain warehouses in that state—the *private property of individual citizens*. After quoting a remark attributed to Lord Chief Justice Hale, to the effect that when private property is "affected with a public interest it ceases to be *juris privati* only," the court says: "Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good

to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but, so long as he maintains the use, he must submit to the control." The doctrines of *Munn v. Illinois* have never been modified by this court, and I am justified, upon the authority of that case, in saying that places of public amusement, conducted under the authority of the law, are clothed with a public interest, because used in a manner to make them of public consequence and to affect the community at large. The law may, therefore, regulate, to some extent, the mode in which they shall be conducted, and, consequently, the public have rights in respect of such places, which may be vindicated by the law. It is consequently not a matter purely of private concern.

Congress has not, in these matters, entered the domain of state control and supervision. It does not assume to prescribe the general conditions and limitations under which inns, public conveyances and places of public amusement, shall be conducted or managed. It simply declares, in effect, that since the nation has established universal freedom in this country, for all time, there shall be no discrimination, based merely upon race or color, in respect of the legal rights in the accommodations and advantages of public conveyances, inns and places of public amusement.

I am of opinion that such discrimination is a badge of servitude the imposition of which Congress may prevent, under its power, through appropriate legislation, to enforce the Thirteenth Amendment; and, consequently, without reference to its enlarged power under the Fourteenth Amendment, the act of March 1, 1875, is not, in my judgment, repugnant to the Constitution.

It remains now to consider these cases with reference to the power Congress has possessed since the adoption of the Fourteenth Amendment.

Before the adoption of the recent Amendments it had become, as we have seen, the established doctrine of this court that negroes, whose ancestors had been imported and sold as slaves, could not become citizens of a state, or even of the United States, with the rights and privileges guaranteed to citizens by the national Constitution; further, that one might have all the rights and privileges of a citizen of a state without being a citizen in the sense in which that word was used in the national Constitution, and without being entitled to the privileges and immunities of citizens of the several states. Still, further, between the adoption of the Thirteenth Amendment, and



the proposal by Congress of the Fourteenth Amendment, on June 16, 1866, the statute books of several of the states, as we have seen, had become loaded down with enactments which, under the guise of Apprentice, Vagrant and Contract Regulations, sought to keep the colored race in a condition, practically, of servitude. It was openly announced that whatever rights persons of that race might have, as freemen, under the guarantees of the national Constitution, they could not become citizens of a state, with the rights belonging to citizens, except by the consent of such state; consequently, that their civil rights, as citizens of the state, depended entirely upon state legislation. To meet this new peril to the black race, that the purposes of the nation might not be doubted or defeated, and by way of further enlargement of the power of Congress, the Fourteenth Amendment was proposed for adoption.

Remembering that this court, in the Slaughter-House cases, declared that the one pervading purpose found in all the recent amendments, lying at the foundation of each, and without which none of them would have been suggested, was "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him"—that each amendment was addressed primarily to the grievances of that race—let us proceed to consider the language of the Fourteenth Amendment.

Its first and fifth sections are in these words:

"SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"SEC. 5. That Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It was adjudged in *Strauder v. West Virginia* and *Ex Parte Virginia*, 100 U. S., 307, 345, and my brethren concede, that positive rights and privileges were intended to be secured, and are in fact secured, by the Fourteenth Amendment,

But when, under what circumstances and to what extent may Congress, by means of legislation, exert its power to enforce the pro-

visions of this amendment? The logic of the opinion of the majority of the court—the foundation upon which its whole reasoning seems to rest—is, that the general government cannot, in advance of hostile state laws or hostile state proceedings, actively interfere for the protection of any of the rights, privileges and immunities secured by the Fourteenth Amendment. It is said that such rights, privileges and immunities are secured by way of *prohibition* against state laws and state proceedings affecting such rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; also, that Congressional legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect.

In illustration of its position, the court refers to the clause of the Constitution forbidding the passage by a state of any law impairing the obligation of contracts. That clause does not, I submit, furnish a proper illustration of the scope and effect of the fifth section of the Fourteenth Amendment. No express power is given Congress to enforce, by primary direct legislation, the prohibition upon state laws impairing the obligation of contracts. Authority is, indeed, conferred to enact all necessary and proper laws for carrying into execution the enumerated powers of Congress and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof. And, as heretofore shown, there is also, by necessary implication, power in Congress, by legislation, to protect a right derived from the national Constitution. But a prohibition upon a state is not a *power in Congress or in the national government*. It is simply a *denial of power* to the state. And the only mode in which the inhibition upon the state laws impairing the obligation of contracts can be enforced is, indirectly, through the courts, in suits where the parties raise some question as to the constitutional validity of such laws. The judicial power of the United States extends to such suits for the reason that they are suits arising under the Constitution. The Fourteenth Amendment presents the first instance in our history of the investiture of Congress with affirmative power, by *legislation* to enforce an express prohibition upon the states. It is not said that the *judicial* power of the nation may be exerted for the enforcement of that Amendment. No enlargement of the judicial power was required, for it is clear that had the fifth section of the Fourteenth Amendment been entirely omitted,



the judiciary could have stricken down all state laws and nullified all state proceedings in hostility to rights and privileges secured or recognized by that Amendment. The power given is, in terms, by congressional *legislation*, to enforce the provisions of the Amendment.

The assumption that this Amendment consists wholly of prohibitions upon state laws and state proceedings in hostility to its provisions, is unauthorized by its language. The first clause of the first section—"all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside"—is of a distinctly affirmative character. In its application to the colored race, previously liberated, it created and granted, as well citizenship of the United States, as citizenship of the state in which they respectively resided. It introduced all of that race, whose ancestors had been imported and sold as slaves, at once, into the political community known as the "People of the United States." They became, instantly, citizens of the United States, and of their respective states. Further, they were brought, by this supreme act of the nation, within the direct operation of that provision of the Constitution which declares that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Art. 4, § 2.

The citizenship thus acquired, by that race, in virtue of an affirmative grant by the nation, may be protected, not alone by the judicial branch of the Government, but by congressional legislation of a primary direct character; this, because the power of Congress is not restricted to the enforcement of prohibitions upon state laws or state action. It is, in terms, distinct and positive, to enforce "the provisions of this article" of the Amendment; not simply those of a prohibitive character, but the provisions—all of the provisions—affirmative and prohibitive, of the Amendment. It is, therefore, a grave misconception to suppose that the fifth section of the Amendment has reference exclusively to express prohibitions upon state laws or state action. If any right was created by that Amendment, the grant of power, through appropriate legislation, to enforce its provisions, authorizes Congress, by means of legislation, operating throughout the entire Union, to guard, secure and protect that right.

It is, therefore, an essential inquiry what, if any, right, privilege or immunity was given, by the nation, to colored persons, when they were made citizens of the state in which they reside? Did the national grant of state citi-

zenship to that race, of its own force, invest them with any rights, privileges and immunities whatever? That they became entitled, upon the adoption of the Fourteenth Amendment, "to all privileges and immunities of citizens in the several states," within the meaning of section 2 of article 4 of the Constitution, no one, I suppose, will for a moment question. What are the privileges and immunities to which, by that clause of the Constitution, they became entitled? To this it may be answered, generally, upon the authority of the adjudged cases, that they are those which are fundamental in citizenship in a free government, "common to the citizens in the latter states under their constitutions and laws by virtue of their being citizens." Of that provision it has been said, with the approval of this court, that no other one in the Constitution has tended so strongly to constitute the citizens of the United States one people. *Ward v. Maryland*, 12 Wall., 430; *Corfield v. Coryell*, 4 Wash. C. C., 371; *Paul v. Virginia*, 8 Wall., 180; *Slaughter-House Cases*, 16 Ib., 77.

Although this court has wisely forbore any attempt, by a comprehensive definition, to indicate all of the privileges and immunities to which the citizens of each state are entitled, of right, to enjoy in the several states, I hazard nothing, in view of former adjudications, in saying that no state can sustain her denial to colored citizens of other states, while within her limits, of privileges or immunities, fundamental in republican citizenship, upon the ground that she accords such privileges and immunities only to her white citizens and withholds them from her colored citizens. The colored citizens of other states, within the jurisdiction of that state, could claim, under the Constitution, every privilege and immunity which that state secures to her white citizens. Otherwise, it would be in the power of any state, by discriminating class legislation against its own citizens of a particular race or color, to withhold from citizens of other states, belonging to that proscribed race, when within her limits, privileges and immunities of the character regarded by all courts as fundamental in citizenship; and that, too, when the constitutional guaranty is that the citizens of each state shall be entitled to "all privileges and immunities of citizens of the several states." No state may, by discrimination against a portion of its own citizens of a particular race, in respect of privileges and immunities fundamental in citizenship, impair the constitutional right of citizens of other states, of whatever race, to enjoy in that state all such privileges and immunities

as are there accorded to her most favored citizens. A colored citizen of Ohio or Indiana, being in the jurisdiction of Tennessee, is entitled to enjoy any privilege or immunity, fundamental in citizenship, which is given to citizens of the white race in the latter state. It is not to be supposed that any one will controvert this proposition.

But what was secured to colored citizens of the United States—as between them and their respective states—by the grant to them of state citizenship? With what rights, privileges, or immunities did this grant from the nation invest them? There is one, if there be no others—exemption from race discrimination in respect of any civil right belonging to citizens of the white race in the same state. That, surely, is their constitutional privilege when within the jurisdiction of other states. And such must be their constitutional right, in their own state, unless the recent Amendments be ‘splendid baubles,’ thrown out to delude those who deserved fair and generous treatment at the hands of the nation. Citizenship in this country necessarily imports equality of civil rights among citizens of every race in the same state. It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the state or its officers, or by individuals or corporations exercising public functions or authority, against any citizen because of his race or previous condition of servitude. In *U. S. v. Cruikshank*, 92 U. S., 555, it was said that “the equality of rights of citizens is a principle of republicanism.” And in *Ex Parte Virginia*, 100 U. S., 334, the emphatic language of the court is that “one great purpose of these Amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the states.” So, in *Strauder v. West Virginia*, 100 U. S., 306, the court, alluding to the Fourteenth Amendment, said: “This is one of a series of constitutional provisions having a common purpose, namely, securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy.” Again, in *Neal v. Delaware*, 103 U. S., 386, it was ruled that this Amendment was designed, primarily, “to secure to the colored race, thereby invested with the rights, privileges and responsibilities of citizenship, the enjoyment of all the civil rights that, under the law, are enjoyed by white persons.”

Much light is thrown upon this part of the discussion by the language of this court in

reference to the Fifteenth Amendment. In *U. S. v. Cruikshank*, it was said: “In *U. S. v. Reese*, 92 U. S., 214, we held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise, on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship, but that exemption from discrimination in the exercise of that right on account of race, &c., is. The right to vote in the states comes from the states; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.” Here, in language at once clear and forcible, is stated the principle for which I contend. It can hardly be claimed that exemption from race discrimination, in respect of civil rights, against those to whom state citizenship was granted by the nation, is any less for the colored race a new constitutional right, derived from and secured by the national Constitution, than is exemption from such discrimination in the exercise of the elective franchise. It cannot be that the latter is an attribute of national citizenship, while the other is not essential in national citizenship, or fundamental in state citizenship.

If, then, exemption from discrimination, in respect of civil rights, is a new constitutional right, secured by the grant of state citizenship to colored citizens of the United States, why may not the nation, by means of its own legislation of a primary direct character, guard, protect and enforce that right? It is a right and privilege which the nation conferred. It did not come from the states in which those colored citizens reside. It has been the established doctrine of this court during all its history, accepted as vital to the national supremacy, that Congress, in the absence of a positive delegation of power to the state legislatures, may, by legislation, enforce and protect any right derived from or created by the national Constitution. It was so declared in *Prigg v. Commonwealth of Pennsylvania*. It was reiterated in *U. S. v. Reese*, 92 U. S., 214, where the court said that “rights and immunities created by and dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress, in the legitimate exercise of its discretion, shall provide. These may be varied to meet the necessities of the particular right to be

protected." It was distinctly re-affirmed in *Strauder v. West Virginia*, 100 U. S., 310, where we said that "a right or immunity created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress." Will any one claim, in view of the declarations of this court in former cases, or even without them, that exemption of colored citizens, within their states, from race discrimination, in respect of the civil rights of citizens, is not an immunity created or derived from the national Constitution?

This court has always given a broad and liberal construction to the Constitution, so as to enable Congress, by legislation, to enforce rights secured by that instrument. The legislation Congress may enact, in execution of its power to enforce the provisions of this Amendment, is that which is appropriate to protect the right granted. Under given circumstances, that which the court characterizes as corrective legislation might be sufficient. Under other circumstances primary direct legislation may be required. But it is for Congress, not the judiciary, to say which is best adapted to the end to be attained. In *U. S. v. Fisher*, 2 Cr., 358, this court said that "Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution." "The sound construction of the Constitution," said Chief Justice Marshall, "must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." *McCulloch v. Maryland*, 4 Wh. 423.

Must these rules of construction be now abandoned? Are the powers of the national legislature to be restrained in proportion as the rights and privileges, derived from the nation, are more valuable? Are constitutional provisions enacted to secure the dearest rights of freemen and citizens, to be subjected to that rule of construction, applicable to private instruments, which requires that the words to be interpreted must be taken most strongly against those who employ them? Or, shall it be remembered that "a constitution of government, founded by the people for themselves and their posterity, and for objects of

the most momentous nature, for perpetual union, for the establishment of justice, for the general welfare, and for a perpetuation of the blessings of liberty, necessarily requires, that every interpretation of its powers, should have a constant reference to these objects? No interpretation of the words, in which those powers are granted, can be a sound one, which narrows down their ordinary import so as to defeat those objects." 1 Story Const., § 422.

The opinion of the court, as I have said, proceeds upon the ground that the power of Congress to legislate for the protection of the rights and privileges secured by the Fourteenth Amendment cannot be brought into activity except with the view, and as it may become necessary, to correct and annul state laws and state proceedings in hostility to such rights and privileges. In the absence of state laws or state action, adverse to such rights and privileges, the nation may not actively interfere for their protection and security. Such I understand to be the position of my brethren. If the grant to colored citizens of United States of citizenship in their respective states, imports exemption from race discrimination, in their states, in respect of the civil rights belonging to citizenship, then, to hold that the Amendment remits that right to the states for their protection, primarily, and stays the hands of the nation, until it is assailed by state laws or state proceedings, is to adjudge that the Amendment, so far from enlarging the powers of Congress—as we have heretofore said it did—not only curtails them, but reverses the policy which the general Government has pursued from its very organization. Such an interpretation of the Amendment is a denial to Congress of the power, by appropriate legislation, to enforce one of its provisions. In view of the circumstances under which the recent Amendments were incorporated into the Constitution, and especially in view of the peculiar character of the new rights they created and secured, it ought not to be presumed that the general Government has abdicated its authority, by national legislation, direct and primary in its character, to guard and protect privileges and immunities secured by that instrument. Such an interpretation of the Constitution ought not to be accepted if it be possible to avoid it. Its acceptance would lead to this anomalous result; that whereas, prior to the Amendments, Congress, with the sanction of this court, passed the most stringent laws—operating directly and primarily upon states and their officers and agents, as well as upon individuals—in vindication of slavery and the

right of the master, it may not now, by legislation of a like primary and direct character, guard, protect, and secure the freedom established, and the most essential right of the citizenship granted, by the constitutional Amendments. I venture, with all respect for the opinion of others, to insist, that the national legislature may, without transcending the limits of the Constitution, do for human liberty and the fundamental rights of American citizenship, what it did, with the sanction of this court, for the protection of slavery and the rights of the masters of fugitive slaves. If fugitive slave laws, providing modes and prescribing penalties, whereby the master could seize and recover his fugitive slave, were legitimate exertions of an implied power to protect and enforce a right recognized by the Constitution, why shall the hands of Congress be tied, so that—under an express power, by appropriate legislation, to enforce a constitutional provision, granting citizenship—it may not, by means of direct legislation, bring the whole power of this nation to bear upon states and their officers, and upon such individuals and corporations exercising public functions, as assume to abridge, impair or deny rights confessedly secured by the supreme law of the land?

It does not seem to me that the fact that, by the second clause of the first section of the Fourteenth Amendment, the states are expressly prohibited from making or enforcing laws abridging the privileges and immunities of citizens of the United States, furnishes any sufficient reason for holding or maintaining that the Amendment was intended to deny Congress the power, by general, primary, and direct legislation, of protecting citizens of the United States, being also citizens of their respective states, against discrimination, in respect of their rights as citizens, founded on race, color, or previous condition of servitude.

Such an interpretation of the Amendment is plainly repugnant to its fifth section, conferring upon Congress power, by appropriate legislation, to enforce not merely the provisions containing prohibitions upon the states, but all of the provisions of the Amendment, including the provisions, express and implied, of the grant of citizenship in the first clause of the first section of the article. This alone is sufficient for holding that Congress is not restricted to the enactment of laws adapted to counteract and redress the operation of state legislation, or the action of state officers of the character prohibited by the Amendment. It was perfectly well known that the great danger to the equal enjoyment

by citizens of their rights, as citizens, was to be apprehended not altogether from unfriendly state legislation, but from the hostile action of corporations and individuals in the states. And it is to be presumed that it was intended, by that section, to clothe Congress with power and authority to meet that danger. If the rights intended to be secured by the act of 1875 are such as belong to the citizen, in common or equally with other citizens in the same state, then it is not to be denied that such legislation is appropriate to the end which Congress is authorized to accomplish, viz., to protect the citizen, in respect of such rights, against discrimination on account of his race. As to the prohibition in the Fourteenth Amendment upon the making or enforcing of state laws abridging the privileges of citizens of the United States, it was impossible for any state to have enforced laws of that character. The judiciary could have annulled all such legislation under the provision that the Constitution shall be the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding. The states were already under an implied prohibition not to abridge any privilege or immunity belonging to citizens of the United States as such. Consequently, the prohibition upon state laws hostile to the rights belonging to citizens of the United States, was intended only as an express limitation on the powers of the states, and was not intended to diminish, in the slightest degree, the authority which the nation has always exercised, of protecting, by means of its own direct legislation, rights created or secured by the Constitution. The purpose not to diminish the national authority is distinctly negatived by the express grant of power, by legislation, to enforce every provision of the Amendment, including that which, by the grant of citizenship in the state, secures exemption from race discrimination in respect of the civil rights of citizens.

It is said that any interpretation of the Fourteenth Amendment different from that adopted by the court, would authorize Congress to enact a municipal code for all the states, covering every matter affecting the life, liberty, and property of the citizens of the several states. Not so. Prior to the adoption of that Amendment the constitutions of the several states, without, perhaps, an exception, secured all persons against deprivation of life, liberty, or property, otherwise than by due process of law, and, in some form, recognized the right of all persons to the equal protection of the laws. These rights, therefore,

existed before that Amendment was proposed or adopted. If, by reason of that fact, it be assumed that protection in these rights of persons still rests, primarily, with the states, and that Congress may not interfere except to enforce by means of corrective legislation, the prohibitions upon state laws or state proceedings inconsistent with those rights, it does not at all follow, that privileges which have been *granted by the nation*, may not be protected by primary legislation upon the part of Congress. The rights and immunities of persons recognized in the prohibitive clauses of the Amendments were always under the protection, primarily, of the States, while rights created by or derived from the United States, have always been, and in the nature of things, should always be, primarily, under the protection of the general Government. Exemption from race discrimination in respect of the civil rights which are fundamental in citizenship in a republican government, is, as we have seen, a new constitutional right, created by the nation, with express power, in Congress, by legislation, to enforce the constitutional provision from which it is derived. If, in some sense, such race discrimination is a denial of the equal protection of the laws, within the letter of the last clause of the first section, it cannot be possible that a mere prohibition upon state denial of such equal protection to persons within its jurisdiction, or a prohibition upon state laws abridging the privileges and immunities of citizens of the United States, takes from the nation the power which it has uniformly exercised of protecting, by primary direct legislation, those privileges and immunities which existed under the Constitution before the adoption of the Fourteenth Amendment, or which have been created by that Amendment in behalf of those thereby made *citizens* of their respective states.

It was said of *Dred Scott v. Sandford* that this court, in that case, overruled the action of two generations, virtually inserted a new clause in the Constitution, changed its character, and made a new departure in the workings of the federal government. I may be permitted to say that if the recent Amendments are so construed that Congress may not, in its own discretion, and independently of the action or non-action of the states, provide, by legislation of a primary and direct character, for the security of rights created by the national constitution, if it be adjudged that the obligation to protect the fundamental privileges and immunities granted by the Fourteenth Amendment to citizens residing in the several states, rests, primarily, not on

the nation, but on the states; if it be further adjudged, that individuals and corporations, exercising public functions, may, without liability to direct primary legislation on the part of Congress, make the race of citizens the ground for denying them that equality of civil rights which the Constitution ordains as a principle of republican citizenship, then, not only the foundations upon which the national supremacy has always securely rested will be materially disturbed, but we shall enter upon an era of constitutional law, when the rights of freedom and American citizenship cannot receive from the nation that efficient protection which heretofore was accorded to slavery and the rights of the master.

But if it were conceded that the power of Congress could not be brought into activity until the rights specified in the act of 1875 had been abridged or denied by some state law or state action, I maintain that the decision of the court is erroneous. There has been adverse state action within the Fourteenth Amendment as heretofore interpreted by this court. I allude to *Ex Parte Virginia*, *supra*. It appears, in that case, that one Cole, judge of a county court, was charged with the duty, by the laws of Virginia, of selecting grand and petit jurors. The law of the state did not authorize or permit him, in making such selection, to discriminate against colored citizens because of their race. But he was indicted in the federal court, under the act of 1875, for making such discriminations. The attorney-general of Virginia contended before us, that the state had done its duty, and had not authorized or directed that county judge to do what he was charged with having done, and, consequently that the state had not denied to the colored race, the equal protection of the laws, and the act of Cole, must, therefore, be deemed his individual act in contravention of the will of the state. Plausible as this argument was, it failed to convince this court, and after saying that the Fourteenth Amendment had reference to the political body denominated a state, "by whatever instruments or in whatever modes that action may be taken," and that a state acts by its legislative, executive and judicial authorities, and can act in no other way, we proceeded: "The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws violates

the constitutional inhibition; and, as he acts under the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning. Then the state has clothed one of its agents with power to annul or evade it. But the constitutional Amendment was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a state, but upon the persons who are the agents of the state in the denial of the rights which were intended to be secured." 100 U. S., 346-7.

In every material sense applicable to the practical enforcement of the Fourteenth Amendment, railroad corporations, keepers of inns, and managers of places of public amusement, are agents of the state, because amenable, in respect of their public duties and functions, to public regulation. It seems to me that, within the principle settled in *Ex Parte Virginia*, a denial, by these instrumentalities of the state, to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the state within the meaning of the Fourteenth Amendment. If it be not, then that race is left, in respect of the civil rights under discussion, practically at the mercy of corporations and individuals, wielding power under public authority.

But the court says that Congress did not, in the act of 1866, assume, under the authority given by the Thirteenth Amendment, to adjust what may be called the social rights of men and races in the community. I agree that government has nothing to do with social, as distinguished from technically legal, rights of individuals. No government ever has brought, or ever can bring, its people into social intercourse against their own wishes. Whether one person will permit or maintain social relations with another is a matter with which government has no concern. I agree that if one citizen chooses not to hold social intercourse with another, even upon grounds of race, he is not and cannot be made amenable to the law for his conduct in that regard; for no legal right of a citizen is violated by the refusal of others to maintain merely social relations with him. What I affirm is that no state, nor the officers of any state, nor any corporation or individual wielding power under state authority for the

public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in their civil rights, because of their race, or because they once labored under disabilities imposed upon them as a race. The rights which Congress by the act of 1865 endeavored to secure and protect are legal not social rights. The right, for instance, of a colored citizen to use the accommodations of a public highway, upon the same terms as are permitted to white citizens, is no more a social right, than his right, under the law, to use the public streets of a city, or a town, or a turnpike road, or a public market, or a post-office, or his right to sit in a public building with others, of whatever race, for the purpose of hearing the political questions of the day discussed. Scarcely a day passes without our seeing in this court-room citizens of the white and black races sitting side by side, watching the progress of our business. It would never occur to any one that the presence of a colored citizen in a court-house or court-room was an invasion of the social rights of white persons who may frequent such places. And yet, such a suggestion would be quite as sound in law—I say it with all respect—as is the suggestion that the claim of a colored citizen to use, upon the same terms as is permitted to white citizens, the accommodations of public highways, or public inns, or places of public amusement, established under the license of the law, is an invasion of the social rights of the white race.

The court, in its opinion, reserves the question whether Congress, in the exercise of its power to regulate commerce amongst the several states, might or might not pass a law regulating rights in public conveyance passing from one state to another. I beg to suggest that that precise question was substantially presented here in the only one of these cases relating to railroads—*Robinson and Wife v. Memphis & Charleston Railroad Company*. In that case it appears that Mrs. Robinson, a citizen of Mississippi, purchased a railroad ticket entitling her to be carried from Grand Junction, Tennessee, to Lynchburg, Va. Might not the act of 1875 be maintained in that case, as applicable at least to commerce between the states, notwithstanding it does not, upon its face, profess to have been passed in pursuance of the power given to Congress to regulate commerce? Has it ever been held that the judiciary should overturn a statute,

because the legislative department did not accurately recite therein the particular provision of the Constitution authorizing its enactment? We have often enforced municipal bonds in aid of railroad subscriptions where they failed to recite the statute authorizing their issue, but recited one which did not sustain their validity. The enquiry in such cases has been, was there, in any statute, authority for the execution of the bonds? Upon this branch of the case, it may be remarked that the state of Louisiana, in 1869, passed a statute giving to passengers, without regard to race or color, equality of right in the accommodations of railroad and street cars, steamboats or other water crafts, stage coaches, omnibuses, or other vehicles. But in *Hall v. De Cuir*, 95 U. S., 487, that act was pronounced unconstitutional so far as it related to commerce between the states, this court saying that "if the public good requires such legislation it must come from Congress and not from the states." I suggest, that it may become a pertinent inquiry whether Congress may, in the exertion of its power to regulate commerce among the states, enforce among passengers on public conveyances, equality of right, without regard to race, color or previous condition of servitude, if it be true—which I do not admit—that such legislation would be an interference by Government with the social rights of the people.

My brethren say, that when a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. It is, I submit, scarcely just to say that the colored race has been the special favorite of the laws. What the nation, through Congress, has sought to accomplish in reference to that race, is—what had already been done in every state of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens, nothing more. The one underlying purpose of congressional legislation has been to enable the black race to take the rank of mere citizens. The difficulty has been to compel a recognition of their legal right to take that rank, and to secure the enjoyment of privileges belonging, under the law, to them as a component part of the people for whose welfare and happiness government is ordained. At every step, in this direction, the nation has been confronted with class tyranny,

which a contemporary English historian says is, of all tyrannies, the most intolerable, "for it is ubiquitous in its operation, and weighs, perhaps, most heavily on those whose obscurity or distance would withdraw them from the notice of a single despot." To-day it is the colored race which is denied, by corporations and individuals, wielding public authority, rights fundamental in their freedom and citizenship. At some future time, it may be some other race that will fall under the ban. If the constitutional Amendments be enforced according to the intent with which, as I conceive, they were adopted, there cannot be, in this republic, any class of human beings in practical subjection to another class, with power in the latter to dole out to the former just such privileges as they may choose to grant. The supreme law of the land has decreed that no authority shall be exercised in this country upon the basis of discrimination, in respect of civil rights, against freemen and citizens because of their race, color, or previous condition of servitude. To that decree—for the due enforcement of which, by appropriate legislation, Congress has been invested with express power—every one must bow, whatever may have been, or whatever now are, his individual views as to the wisdom or policy, either of the recent changes in the fundamental law, or of the legislation which has been enacted to give them effect.

For the reasons stated I feel constrained to withhold my assent to the opinion of the court.

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## The Courts.

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### U. S. Supreme Court Proceedings.

Nov. 16, 1883.

The following persons were admitted to practice:

No. 127. W. J. Smith et al., plaintiffs in error, v. Malcolm McNeal et al. Argument concluded.

No. 128. Oakey Randall, plaintiff in error, v. The Baltimore & Ohio Railroad Co. Argued.

No. 129. Virginia Young, appellant, v. A. B. Duvall and William F. Holtzman. Argument commenced.

Nov. 19, 1883.

Kittredge Haskins, of Brattleboro, Vt.; William L. Joy, of Sioux City, Iowa; J. B. Grinnell, of Grinnell, Iowa; E. S. Bailey, of Clinton, Iowa, and Frank J. Loesch, of Chicago, were admitted to practice.

No. 882. G. De Rosset Lamar, executor, &c., v. Charles F. McCay. Appeal from the circuit court of the United States for the southern district of New York. Decree reversed with costs, and cause remanded with directions to dismiss the bill of complaint with costs. Opinion by Mr. Justice Blatchford.



No. 48. Richard Arnson et al., plaintiffs in error, v. Thomas Murphy, collector, &c. In error to the circuit court of the United States for the southern district of New York. Judgment reversed with costs, and cause remanded with directions to award a new trial. Opinion by Mr. Justice Matthews.

No. 765. The Louisville and Nashville Railroad Co., plaintiffs in error, v. Manuel Palmes, collector, &c. In error to the supreme court of the state of Florida. Decree affirmed with costs. Opinion by Mr. Justice Matthews.

No. 87. The United States to use of Nathaniel Wilson, administrator, &c., plaintiff in error, v. David Walker. In error to the supreme court of the District of Columbia. Judgment affirmed with costs. Opinion by Mr. Justice Woods.

No. 102. Patrick G. Meath, plaintiff in error, v. the Board of Mississippi Levee Commissioners. In error to the circuit court of the United States for the southern district of Mississippi. Judgment affirmed with costs. Opinion by Mr. Justice Woods.

No. 84. The Monongahela National Bank of Brownsville, Pa., plaintiff in error, v. Samuel H. Jacobus. In error to the circuit court of the United States for the western district of Pennsylvania. Judgment affirmed with costs. Opinion by Mr. Justice Harlan.

No. 60. William R. Grace et al., plaintiffs in error, v. the American Cent. Insurance Co. of St. Louis. In error to the circuit court of the United States for the eastern district of New York. Judgment reversed with costs and cause remanded with directions to set aside the judgment and for further proceedings not inconsistent with the opinion of this court. Opinion by Mr. Justice Harlan.

No. 34. The State of Louisiana ex rel. Folsom Bros., plaintiffs in error, v. the Mayor, &c., of the city of New Orleans. In error to the supreme court of the State of Louisiana. Judgment affirmed with costs. Opinion by Mr. Justice Field, Mr. Justice Harlan dissenting.

No. 552. William C. Walsh, Commissioner of General Land Office of the State of Texas. Appellant, v. William Preston, and

No. 553. William Preston, appellant, v. William C. Walsh, Commissioner, &c. Appeals from the circuit court of the United States for the western district of Texas. Decree reversed and cause remanded with directions to dismiss the bill. Costs in this court to be paid by William Preston. Opinion by Mr. Justice Miller, Mr. Justice Harlan dissenting.

No. 71. The Dubuque and Sioux City Railroad Co. et al., plaintiffs in error, v. the Des Moines Valley Railroad Co. In error to the supreme court of the State of Iowa. Judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 1207. Joseph Hurtado, plaintiff in error, v. the People of the State of California. Motion to advance granted. Announced by Mr. Chief Justice Waite.

No. 530. Joseph B. Holland, plaintiff in error, v. James H. Chambers. Motion to advance granted. Announced by Mr. Chief Justice Waite.

No. 721. The County of San Mateo, plaintiff in error, v. the Southern Pacific Railroad Co. and

No. 1200. The County of Santa Clara, plaintiff in error, v. the Southern Pacific Railroad Co. Motions to advance denied. Announced by Mr. Chief Justice Waite.

No. 1138. Augustine R. McDonald, appellant, v. Charles E. Hovey et al. Motions to advance and for a writ of certiorari granted. Announced by Mr. Chief Justice Waite.

No. 1038. John A. Dushane et al., plaintiffs in error, v. Joseph Benedict. Motion to dismiss denied. Announced by Mr. Chief Justice Waite.

No. 1216. The Central Railroad Co. of Iowa, appellant, v. J. B. Grinnell, receiver, &c. Appeal from the circuit court of the United States for the Southern district of Iowa. Docketed and dismissed with costs.

No. 189. Douglas Putnam et al., appellants, v. the Township of Barnhill, &c. Appeal from the circuit court of the United States for the Southern district of Illinois. Dismissed with costs.

No. 970. A. Austin Smith, plaintiff in error, v. Samuel C. Greenhow. Submitted under thirty-second rule.

No. 129. Virginia Young, appellant, v. A. B. Duvall et al. Argument concluded.

No. 131. Joel B. Harris, appellant, v. William H. Warder. Appeal from the circuit court of the United States for the Northern district of Illinois. Dismissed with costs.

Nov. 20, 1888.

John R. Glasscock, of Oakland, Cal., and Chas. H. Tweed, of New York City, were admitted to practice.

No. 288. The Spring Valley Water Works, plaintiff in error, v. Antone Schottler et al. Argument commenced.

Nov. 21, 1888.

Barclay Henley, of Santa Rosa, Cal., was admitted to practice.

No. 1207. Joseph Hurtado, plaintiff in error, v. the People of the State of California. Assigned for the foot of the call on the 15th of January next.

No. 288. The Spring Valley Water Works, plaintiff in error, v. Antoine Schottler et al. Argued.

No. 105. James F. Phillips, plaintiff in error, v. The Southern Pacific Railroad Co.; and

No. 106. James H. Cox, plaintiff in error, v. The Southern Pacific Railroad Co. Submitted.

No. 85. Jacob Estey et al., appellants, v. Riley Burdett. Argument commenced.

Nov. 22, 1888.

Samuel B. Witt, of Richmond, Va., was admitted to practice.

No. 969. Thomas Poindexter, plaintiff in error, v. Samuel C. Greenhow.

No. 971. William L. White, plaintiff in error, v. Samuel C. Greenhow; and

No. 972. Samuel S. Carter, plaintiff in error, v. Samuel C. Greenhow. Substituted under the twentieth rule.

No. 85. Jacob Estey et al., appellants, v. Riley Burdett. Argument continued.

Nov. 23, 1888.

George C. Squires, of St. Paul, Minn., was admitted to practice.

No. 85. Jacob Estey et al., appellants, v. Riley Burdett. Argument concluded.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

Nov. 16, 1888.

Summerville v. Tennet et al. Opinion reversing decree below and remanding case.

Elgin v. Upton. Peremptory mandamus awarded.



Walbridge v. Smith et al. On hearing.  
Nov. 19, 1883.  
Baldwin v. Grahamite and Trinidad Asphalt Co.  
Opinion by Mr. Justice James.  
Marshall v. Main & Bro. Opinion by Mr. Justice Cox.  
Walbridge v. Smith. Argued and submitted.  
Walker v. Boyle. On hearing.  
Nov. 20, 1883.  
Walker et al. v. Boyle. On hearing.  
Nov. 21, 1883.  
Walker et al. v. Boyle. Decree of special term reversed and bill dismissed.  
Just v. Holliday. Argued and submitted.  
Nov. 22, 1883.  
Barrett v. National Bank of the Republic. Argued and submitted.  
Nov. 23, 1883.  
Wall v. District of Columbia. Argued and submitted.  
Weiner v. Utermehle. On hearing.

**CIRCUIT COURT.—Justice Mac Arthur.**

Nov. 16, 1883.  
Jones v. Baltimore & Ohio Railroad Co. On trial.  
Nov. 19, 1883.  
Jones v. Baltimore & Ohio Railroad Co. On trial.  
Nov. 20, 1883.  
Jones v. Baltimore & Ohio Railroad Co. On trial.  
Nov. 21, 1883.  
Jones v. Baltimore & Ohio Railroad Co. Jury out.  
Keyser v. Hitz. On trial.  
Nov. 22, 1883.  
Jones v. Baltimore & Ohio Railroad Co. Verdict for plaintiff for \$8,000.  
Keyser, receiver, &c., v. Hitz. Verdict for defendant.  
Pumphrey v. Baltimore & Potomac Railroad Co. On trial.  
Nov. 23, 1883.  
Pumphrey v. Baltimore & Potomac Railroad Co. On trial.

**EQUITY COURT.—Justice Hagner**

Nov. 16, 1883.  
Clark v. Lyon. Restraining order to issue on filing bond.  
Taylor v. Taylor. Sale ordered and I. G. Kimball and Francis Miller appointed trustees to sell.  
Nov. 19, 1883.  
Starr v. Treackle. Time to take testimony limited to thirty days.  
In re Della Hines, alleged lunatic. Commission de lunatico inquiriendo ordered to issue.  
Adams v. Stoddard et al. Appearance of absent defendants ordered.  
Lansburg v. Renault. Security for costs.  
Jarboe v. O'Neal. Prayer for receiver denied.  
Shattuck v. Shattuck. Decree of November 6 modified.  
Lane v. Evans. Exceptions to auditor's report overruled.  
Mutual Relief Association v. Higgins. Payment of fund by complainant ordered.  
Adams v. Clarke. Conveyance to John Adams decreed.  
Meem v. Mardin. Further testimony ordered taken before Examiner John Cruikshank.  
Nov. 20, 1883.  
Crowe v. Boucher. Reference to the auditor of the receiver's account.

Starr v. Shaw. Mary Jane Treackle allowed to intervene.  
Reissner v. O'Hara. Appearance of absent defendant ordered.  
Johnson v. Johnson. Order appointing Letitia Johnson guardian ad litem.  
Schillinger v. Crawford. Rule on complainant discharged.  
Barrett v. Brown et al. Appearance of absent defendants ordered.  
Scott v. Scott. Appearance of absent defendant ordered.  
Nov. 21, 1883.  
Green v. Forsberg. Sale ratified nisi and cause referred to the auditor.  
Birth v. Birth. Bill dismissed with costs.  
Richardson v. Clarke. Trustees permitted to sell under deed of trust.  
Jones v. Jones. Payment of allowance pendente lite.  
Westham Granite Co. v. Chandler et al. Pro confesso against George Hill, jr., vacated on terms.  
Willard v. Willard. Sale finally ratified and cause referred to the auditor.  
Bower v. Herth. Reference to the auditor.  
Mason v. Mason. Sale finally ratified.  
Schillinger v. District of Columbia. Demurrer of the defendant overruled.  
Luckett v. Luckett. Order appointing A. C. Bradley guardian ad litem.  
Mason v. Bryan. Auditor's report confirmed.  
Murphy v. Unknown Heirs of Washington. Sale ordered and C. H. Cragin, jr., and W. J. Miller appointed trustees.  
Corey v. White. Leave to amend bill.  
Nov. 22, 1883.  
Mason v. Bryan. Additional exceptions allowed to be filed.  
Roys v. Roys. Motions set for hearing on November 27.  
Calvert v. Calvert. Order appointing John D. Coughlin guardian ad litem.  
Burns v. Kinney. Bill dismissed.  
Meem v. Mardin. Decree divesting title from defendants and investing in complainants.  
Nov. 23, 1883.  
Nickerson v. Nickerson. Sixth and ninth paragraphs of the bill ordered stricken out.  
Rye v. Braxton. Sale ordered and W. S. Thompson appointed trustee to sell.  
Weggeman v. Weggeman. Auditor's supplemental report adopted.  
Whelan v. Lowe. Amendment to bill allowed.

**CRIMINAL COURT.—Justice Wylie.**

Nov. 12, 1883.  
B. F. Bigelow; embezzlement; on trial.  
Nov. 13, 1883.  
Same.  
Nov. 14, 1883.  
B. F. Bigelow; embezzlement; guilty.  
Nov. 15, 1883.  
Kate White, alias Sophia Wanzer; assault; guilty; thirty days in jail.  
William, alias Mikey, Walsh; larceny; gave bail in the sum of \$300.  
Frank Sellman; house breaking in the night; guilty; motion for a new trial.  
Michael Robinson; receiving stolen property; guilty; fined \$100.  
John Williams; house breaking in the day; guilty; six months in jail.

John H. Williams; house breaking; guilty; sentence suspended.

Nov. 16, 1883.

William H. William; assault; a nolle pros. entered.

Samuel Hessler and Charles Collins; assault with intent to kill Patrick Shugrue; not guilty. George Litchfield; house breaking in the night; guilty; one year in jail.

Joseph Meyer; false pretenses; on trial.

Nov. 19, 1883.

William Thomas and Robert H. Harris, alias John Harris; larceny; plead not guilty.

Archibald Fletcher; assault with intent to kill; plead not guilty.

B. F. Bigelow; embezzlement; motion for a new trial filed.

James Meyer, alias Richter; false pretenses; guilty; sentenced to one year in jail.

Charles E. Barber; assault (appeal); not guilty. Charles Major; larceny; plead guilty; sentence suspended.

Elise Robinson; larceny; not guilty.

Charles Murphy; assaulting an officer; on trial.

Nov. 20, 1883.

Charles Murphy; assaulting an officer; guilty; sentenced to ten days in jail.

Joseph B. Loudon; rape; admitted to bail in the sum of \$2,500.

Glenmore Moten; depredation on property; jury out.

Joseph M. Beard; larceny; plead guilty; four months in jail.

Francis A. Maguire; forgery; recognizance forfeited.

Nov. 24, 1883.

William Banket; previously convicted of house breaking; sentenced to six months in jail.

Andrew Bender; assault with intent to kill; guilty of assault; fined \$30.

George Washington; assaulting officer; not guilty.

Caleb Lancaster; assault with intent to kill Thomas Hall; not guilty.

William Walsh; larceny (appeal); on trial.

Nov. 22, 1883.

William Walsh; larceny; not guilty.

C. W. Thompson; keeping a gaming table; plead guilty; fined \$100 and twenty-four hours in jail.

Charles E. Capehart; embezzlement; guilty; notice of a motion for a new trial.

Nov. 23, 1883.

Bela Feehey; assault; not guilty.

Jeremiah Costello; forgery; on trial.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

Nov. 20, 1883

24893. W. B. Moses & Son, v. Marian Esselmann et al. Judgment of Justice Hall, \$3243. Piffs atty, J. J. Wilmarth.

Nov. 21, 1883.

24893 Harry O. Hoile v. Richard Silvester. Replevin. Piffs atty, L. Browning.

### IN EQUITY.—New Suits.

Nov. 16, 1883.

8788. Rosalie M. Bradford v. Mary J. Treackle. Specific performance. Com. sola., Hagner & Maddox. Defs sol., E. S. Davis.

Nov. 17, 1883.

8786. Jane Farnham v. Mary Buell et al. To release deed of trust. Com. sola., Cook & Cole.

8790. Rudolph Johnson v. Sarah A. Johnson et al. To sell. Com. sol., H. W. Garnett.

8791. Elizabeth H. Sebastian v. John F. Sebastian. For divorce. Com. sol., J. J. Weed.

Nov. 19, 1883.

8792 Reburta Eldridge v. Watson W. Eldridge. For divorce. Com. sol., J. J. Johnson.

8793. Jane B. Ferguson et al. v. Jos. A. Swann. Injunction. Com. sola., James Lowndes and R. Fendall.

8794. Delia Hynes, upon petition of Mary Anderson. De lunatico inquiriendo. Com. sol., J. C. Nichols.

8796. Wilhelmina Riessner v. Anna O'Hara et al. To perpetuate testimony. Com. sol., J. J. Darlington.

8798. George Luckett v. Mary E. Luckett et al. To sell. Com. sol., N. H. Miller.

Nov. 20, 1883.

8797. Emily F. Scott v. Franklin Scott. For divorce. Com. sol., J. E. Clements.

### PROBATE COURT.—Justice Hagner.

Nov. 22, 1883.

Estate of Rev. P. F. McCarthy; final notice issued to the executor.

In re John Golden, guardian; answer of guardian filed.

Estate of Daniel Walsh; proof of publication filed.

Will of Stephen H. Mirick; filed, admitted to probate and record and letters testamentary issued to the widow on bond of \$10,000.

Will of Samuel Stott; filed and fully proved; letters testamentary issued to Charles J. and Samuel G. Stott on bond of \$5,000.

Estate of H. L. Strasburger; petition of Levy & Katsman for revocation of letters to Mina Strasberger and rule to show cause issued.

Estate of William Martin; order appointing Luther Martin administrator on bond of \$5,000.

Estate of David Welsh; objection to the appointment of an administrator for the present.

In re Charles Beall, guardian; order directing him to pay \$150 to the ward.

Estate of Thomas Cowling; petition of Elizabeth Gladman asking to substitute the name of Gladman for Cowling.

Estate of Robert J. Powell; deposition of witnesses filed.

Estate of Susanna V. Walker; order directing citation against administrator.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.

EMILY F. SCOTT } No. 8797. Equity Docket.

FRANKLIN SCOTT, }  
On motion of the plaintiff, by Mr. James E. Clements, her solicitor, it is ordered that the defendant, Franklin Scott, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

True copy. Test: 47-3 E. J. Meigs, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.

WILHELMINE RIESSNER } No. 8796. Eq. Doc. 23.

ANNA O'HARA ET AL. }  
On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Julia Eddy nee O'Hara, Susan O'Hara, Virginia O'Hara and George O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 47-3 E. J. Meigs, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.

WM CLAUDE BARRETT } No. 8782. Eq. Doc. 23.

MARY E. BROWN ET AL. }  
On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, Mary A. Bilyer, Sanford Bilyer, Oskaloosa F. Staler and John W. Staler and George T. Brown, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 47-3 E. J. Meigs, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah A. Hibbey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1883.  
JOHN P. FRANKLIN, Executor.

CALDERON CARLISLE, Solicitor. 47-3

**THIS IS TO GIVE NOTICE,**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Stott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of November, 1883.

CHARLES J. STOTT,  
SAMUEL G. STOTT,  
Executors.

WM. B. WEBB, Solicitor. 47-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.** Holding a Special Term for Orphans' Court Business. November 23, 1883.

In the case of Theodore Sheckels, Executor of Patrick F. McCarthy, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of December, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 47-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

FANNY STEPHENS

MARY A. PROCTOR ET AL. } Equity. No. 5677.

Brainerd H. Warner and Charles C. Glover, trustees, having reported that they have sold lot numbered four (4), in W. W. Corcoran's subdivision of original lots two (2) and three (3), in square numbered three hundred and thirty-seven (337), with the improvements thereon to Patrick R. Daly, for the sum of \$1,415: It is, this 24th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, A. D. 1884. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 47-3 R. J. MEIGS, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** the 14th day of November, 1883.

LEIGH ROBINSON, Complainant

DR. JOHN KURTZ, THOMAS KURTZ AND ANNA E. KURTZ HIS WIFE, JANE MOSHER SMOOT AND WILLIAM S. SMOOT HER HUSBAND, KATHERINE B. CHILDS AND ALLEN CHILDS HER HUSBAND, AND MINNIE H. KURTZ, Defendants. } No. 8783.  
Eq. Doc. 23.

It appearing to the court that none of said defendants can be found in this district:

On motion of the complainant, by Mr. Conway Robinson, jr., his solicitor, it is ordered that the defendants, Dr. John Kurtz, Thomas Kurtz and Anna E. Kurtz, his wife, Jane Mosher Smoot and William S. Smoot her husband, Katherine B. Childs and Allen Childs her husband, and Minnie H. Kurtz, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 46-3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Martin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of November, 1883.

LUTHER MARTIN, Administrator.  
EDWARDS & BARNARD, Solicitors. 47-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** the 19th day of November, 1883.

EMMETT C. ADAMS

EPHRAIM S. STODDARD ET AL. } No. 8786. Eq. Dec. 28.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendants, Ephraim S. Stoddard and Charles D. Sturtevant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** holding a Special Term for Orphans' Court Business. November 9, 1883.

In the matter of the Will of Frances E. Berry, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Mary A. S. Cary. All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.

JAMES H. SMITH, Solicitor. 46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** holding a Special Term for Orphans' Court Business. November 9, 1883.

In the case of Margaret O. Gannt, Administratrix of Matilda S. Smith, deceased, the Administratrix aforesaid has, with the approval of the court, appointed Friday, the 7th day of December A. D. 1883, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: H. J. RAMSDELL, Register of Wills.  
ARTHUR T. BRICE, Solicitor. 46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,** the 24th day of October, 1883.

AMOS BINNEY ET AL.

MARIANNE H. BINNEY ET AL. } No. 8754. Eq. Dec. 23.

The Marshal having returned the summons for the hereinafter named defendants, "Not to be found:"

On motion of the plaintiffs, by Mr. Fred. W. Jones, their solicitor, it is ordered that the defendants, Amelia Dawson, Brooke Dawson, Margaret J. Beall, Thomas S. Beall, Christiana Thomas, Harriet B. Chesley, Harriet De B. Scott, Edward Williams, John Chandler Smith, Leonard Mackall, Harriet M. Taylor, Margaretta M. Key, Mary S. Compton, William W. Mackall, Covington Mackall, Benj. F. Mackall, Anna M. May, Virginia McCabe, Robert M. Mackall, Benjamin Mackall, Chas. M. Mackall, Richard L. Mackall and Mary J. Palmer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 48-6 Test: R. J. MEIGS, Clerk.

## Legal Notices.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William P. Copeland, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1883.  
45-3 SARAH P. COPELAND, Administratrix.

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John A. Schnopp, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1883.  
45-3 CATHARINE SCHNOPP,  
Executrix, 622 4 1/2 street, s. w.

## THIS IS TO GIVE NOTICE.

That the subscriber of Hamilton County, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Beckley, late of the city of Cincinnati, O. deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1883.  
J. C. THOMAS.  
45-3

PRESBURY & GREEN, Solicitors.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.

In the matter of the Will of Robert Payne, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a., on the estate of the said deceased has this day been made by James Henning.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters of Administration c. t. a., on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
JOSEPH FORREST, Solicitor. 45-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 7th day of November, 1883.

HENRY WALTER

No. 8,112. Equity Docket.

MINNA UHLMANN.

On motion of the plaintiff, by Mr. Leon Tobriner, his solicitor, it is ordered that the defendants, Minna Uhlmann, Robert Uhlmann, Charles F. Uhlmann, Theodore J. Uhlmann and George F. Uhlmann, cause their appearance to be entered herein to the original and supplemental bills herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. 45-3 Test: R. J. Meigs, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 9th day of November, 1883.

ELIZABETH R. HUTCHINS

No. 8746. Eq. Doc. No. 23.

FRANCIS J. HUTCHINS ET AL. On motion of the plaintiff, by Messrs. Carusi & Miller, her solicitors, it is ordered that the defendants, Francis J. Hutchins, Joseph Hutchins, Lullia Sherwood and Lawrence Sherwood, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 45-3 R. J. Meigs, Clerk.

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FRANK B. SMITH

No. 8,410. Equity.

SUSAN BURCH ET AL.

Job Barnard, trustee herein, having reported a sale of the east 20 feet front of lot 13, square 377, in the city of Washington, in the District of Columbia, to Mary Rocca, for \$10,025:

It is, this 7th day of November, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 45-3 E. J. Meigs, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ROBERT FORTNER

No. 8,039. Equity.

JOHN H. LEONARD.

Upon consideration of the report of James L. Davis, trustee in this cause, of the sale of part of lot six (6), in square twenty-nine (29), to William Casley, for \$1,000, it is, by the court this fifth day of November, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 19th day of December, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 45-3 E. J. Meigs, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Augustus W. Scharit, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1883.

JOHN L. CROUSE.  
GEORGE A. KING, Solicitor. 45-3

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.

In the matter of the Will and Oodell of Thomas Swann, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Chas. Shirley Carter and James Lowndes.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 45-3 H. J. RAMSDELL, Register of Wills.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.

In the matter of the Estate of Albert Mangin Perrotti, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the estate of the said deceased has this day been made by Charles C. Duncan.

All persons interested are hereby notified to appear in this court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
J. M. YZNAGA, Solicitor. 45-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William G. H. Newman, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of November, 1883.

MARY A. NEWMAN,  
RAPHAE L. G. GWYNN,  
Executor.

CHAS. A. ELLIOTT, Solicitor.

46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Estate of Patrick Hanaphy, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by James Higgins.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
ANSON S. TAYLOR, Solicitor.

46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Will of Byron A. Kidder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Thomas Greer.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
ANSON S. TAYLOR, Solicitor.

46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

URTON H. RIDENOUR

No. 8660. Eq. Doc.

CHARLES E. MCLELLAND ET AL.

The trustee in this cause having reported the sale of the property in the county of Washington mentioned in said cause to Charles E. Vernon, for seventeen hundred and ten dollars, it is, this thirteenth day of November, A. D. 1883, ordered, that the sale reported be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the fifteenth day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said fifteenth day of December, 1883.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 46-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

F. S. AND T. COMPANY

Equity. No. 5,136.

JOSEPH BROOKS ET AL.

Upon consideration of the report of James T. Wormley, trustee of the sale of lot 4, in section 1, of the Barry Farm, to George W. Stickney, trustee, for \$301; it is, this 13th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 18th day of December, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice.

True copy. Test: 46-3 R. J. MEIGS, Clerk.

*Legal Notices.*

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Estate of John G. Stephenson, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jared C. Nichols.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: 46-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.**

In the matter of the Estate of Mary G. Harris, late of Washington City, in the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Gray, one of the next of kin of said deceased.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

HANNA & JOHNSTON, Solicitors.

46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the matter of the Estate of Napoleon Hudlin, late of Washington, District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by George C. Brown.

All persons interested are hereby notified to appear in this Court on or before the 7th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

HENRY R. ELLIOTT, Solicitor.

46-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of Richmond, Va., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Adam, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of November, 1883.

RICHARD ADAM, Executor.

HENRY WISE GARNETT, Solicitor.

45-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 9, 1883.**

In the matter of the Will of Adam Dade, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Louisa Dade.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

B. T. HANLEY, Solicitor.

45-3

# Washington Law Reporter

WASHINGTON - - - - - December 1, 1883

GEORGE B. CORKHILL - - - EDITOR

## The Case of Kilbourn vs. Thompson,

### Damages for False Arrest and Imprisonment.

The recent trial of this case in the Supreme Court of the District of Columbia, before Mr. Justice Cox and a jury, and the proceedings subsequent to the rendition of the verdict, have attracted such general attention throughout the country, while the charge of the judge to the jury and his opinion delivered in setting aside the verdict embrace so thorough an exposition of the law of damages for personal torts, that we are persuaded we cannot offer to our readers this week any more acceptable matter than a summary of the case with the charge and the opinion of the court in full.

#### STATEMENT OF THE CASE.

On the 24th day of January, 1876, the House of Representatives of the United States adopted the following preamble and resolution:

"WHEREAS, the Government of the United States is a creditor of the firm of Jay Cooke & Co., now in bankruptcy by order and decree of the District Court of the United States in and for the Eastern District of Pennsylvania, resulting from the improvident deposits made by the Secretary of the Navy of the United States with the London branch of the said house of Jay Cooke & Co. of the public moneys; AND WHEREAS the matter known as the real-estate pool was only partially inquired into by the late joint select committee to inquire into the affairs of the District of Columbia, in which Jay Cooke & Co. had a large and valuable interest; AND WHEREAS, Edwin M. Lewis, trustee of the estate and effects of said firm of Jay Cooke & Co., has recently made a settlement of the interest of the estate of Jay Cooke & Co. with the associates of said firm of Jay Cooke & Co., to the disadvantage and loss, as it is alleged, of the numerous creditors of said estate, including the Government of the United States; AND WHEREAS, the courts are now powerless, by reason of said settlement, to afford adequate redress to said creditors;

"Resolved, That a special committee of

five members of this House, to be selected by the Speaker, be appointed to inquire into the nature and history of said real-estate pool and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers, and report to this House."

The committee was appointed and proceeded to make the investigation with which it was charged.

Hallett Kilbourn was summoned to appear as a witness before the committee, and to bring certain private papers relating to the subject. When he appeared, he refused to produce the papers and refused to answer certain questions. On the report of these facts to the House, they ordered that the Speaker issue his warrant to the sergeant-at-arms, John G. Thompson, commanding him to arrest Kilbourn and bring him to the bar of the House, to show cause why he should not be punished for contempt. Kilbourn was arrested and brought to the bar of the House, and, upon his continued refusal to obey the summons aforesaid, was adjudged guilty of contempt, was ordered by the House to be re-committed to the custody of the sergeant-at-arms and imprisoned in the common jail of the District, until he should purge himself of the contempt.

The Speaker issued his warrant accordingly, and Kilbourn, by virtue of it, was imprisoned by the sergeant-at-arms in the District jail and remained there for thirty-five days, when he was discharged by Chief-Justice Carter, on *habeas corpus* and delivered into custody of the marshal of the District, to answer an indictment found against him by the grand jury, under the act of Congress "concerning witnesses summoned by either House," of Jan. 24, 1857, 11 Stats. at Large, 155.

He thereupon sued Thompson, the sergeant-at-arms, the Speaker, M. C. Kerr, and several members of the House, viz., John M. Glover, Jephtha D. New, Burwell P. Lewis and A. Herr Smith, for trespass.

Thompson justified under the Speaker's warrant.

The others pleaded the general issue, and justification in special pleas. Kilbourn demurred to the special pleas. The demurrer was overruled and judgment entered for defendants. A writ of error was sued out to the Supreme Court of the United States, and the judgment sustained as to the members of the House, but reversed as to Thompson, and the Speaker's warrant was held no defense to the action, as to him.

The case came on for trial again as against Thompson before Justice Mac Arthur.

The declaration averring no special damages, all evidence as to injury to business and health and loss of time was ruled out. The jury found a verdict for \$100,000, which was by the court set aside as excessive.

After this the plaintiff amended his declaration on the 13th day of May, A. D. 1882, averring special damages. Besides the general issue, the defendant pleaded justification in a new form, which did not show the nature of the inquiry in which Kilbourn was summoned as a witness, or that it was in a matter beyond the jurisdiction of the House; and also pleaded the statute of limitations to the new averments of damage. These pleas were demurred to.

The case coming on for trial anew, October 29, 1883, before Justice Cox, the demurrer of the plaintiff was sustained, and the case went to the jury on the general issue, the matter alleged in the special pleas being given in evidence in mitigation. After the evidence closed, the court gave the following written instructions, having refused to give those asked for by the defendant:

#### INSTRUCTIONS TO THE JURY, OF COX, J.:

Damages are, in law, of two kinds, viz.; first, vindictive, punitive or exemplary, and secondly, compensatory only.

The first may be awarded against a defendant who has been guilty of malice or wanton excess or abuse of authority towards the plaintiff, or wilful and culpable negligence, resulting in injury; and they are intended not only to compensate the plaintiff for his injury, but, in addition thereto, to punish the defendant and make an example of him.

In the absence of the above mentioned elements from the wrong, and especially where the defendant has acted under a supposed legal authority, the damages allowed must be only such as to compensate the plaintiff for the actual loss and injury that he has suffered.

If, therefore, the jury find that the defendant was the sergeant-at-arms of the House of Representatives, and was ordered by the House to arrest and confine the plaintiff in the jail of the District, and that the defendant acted therein only in obedience to said order and in the honest belief that he was discharging his duty as an officer of the House, and without malice to the plaintiff or any unnecessary harshness in the manner of executing his said supposed duty, the plaintiff is not entitled to recover in this action any exemplary damages, but only such as will compensate

him for the actual loss and injury he may have suffered in consequence of the acts of the defendant.

In estimating the compensatory damages, the jury may allow for the personal inconvenience, and for sickness and bodily and mental suffering, which they may find to have been the direct consequence of the defendant's act of confining the plaintiff, and for the expenses incurred by the latter in having been restored to health.

If the time of the plaintiff, lost in consequence of his arrest and confinement, had an actual pecuniary value to him, the jury may allow for the time so lost.

If the jury find that the plaintiff had an existing business of value, at the time of his arrest, which was destroyed by the fact of his arrest and confinement by the defendant, they may allow for the loss so occasioned.

But the jury are not to award damages for the loss of mere possible speculative or conjectural gains, which it may be supposed that the plaintiff might have realized in the future but for his said arrest; neither are they to give damages, as against this defendant, for any injury to the plaintiff's credit, or wounding of his feelings and sensibilities, by or in consequence of language used or acts done by the House of Representatives, or its committees or members, nor for any detention or confinement of the plaintiff after he was discharged from the defendant's custody on the 18th April, 1876.

The arguments having been closed, the court gave the following charge to the jury:

#### CHARGE TO THE JURY OF COX, J.

GENTLEMEN OF THE JURY: After listening to the conflicting views of counsel, the jury is sometimes aided by suggestions from the court. I shall address myself to that task now in a very few words.

The argument has apprised you that this is an action for false imprisonment. In this species of action, if the defendant can show that he acted by legal authority, it is always a complete defence. In the present action, the defendant did plead that he acted by virtue of a warrant issued to him from the Speaker of the House of Representatives, in pursuance of a resolution of that House, declaring the plaintiff in this case to be in contempt of the House and directing his imprisonment as a punishment for that contempt. This court held that to be a sufficient defence and entered judgment for the defendant; but the case was carried to the Supreme Court of the United States by the plaintiff, and that court reversed the judgment of this court. It



held that, although in a certain class of cases, such, for example, as cases relating to the election of its own members, either House of Congress has the right to institute investigations, to summon witnesses and to compel them to answer inquiries under penalty of imprisonment, yet that in a case like this, which really was an investigation into the private affairs of a citizen, neither House of Congress has a right to put a witness upon the stand and exact an answer from him under penalty of imprisonment for refusal; and that, therefore, the warrant of the Speaker, commanding the arrest and imprisonment of this plaintiff, was unlawful and constituted no defence to this defendant in the present action. The case now comes back here, therefore, to be tried anew, and inasmuch as no other defence is relied upon, I am constrained to hold, under the ruling of the Supreme Court, that the plaintiff is entitled to a verdict, and that the only question for you to determine is what amount of damages he ought to receive.

In entering upon this investigation it is important for you to bear one or two things in mind; and the first is, that this is not an action against the United States in any sense, or against the members of Congress or the House of Representatives or any of its committees. The action was, in the first instance, instituted not only against the defendant, Thompson, but against the Speaker of the House of Representatives and several members of that body; but this court held, and the Supreme Court of the United States affirmed its judgment in that respect, that a member of Congress is not answerable in damages for his official action; and consequently judgment was entered in favor of those defendants and they are out of this case. It is, therefore, now, a case only against the defendant, John G. Thompson.

It is further important for you to bear in mind that the defendant has no recourse against the United States for indemnification or reimbursement if he shall be compelled to pay damages for the alleged grievance. It is important to bring this to your attention, because otherwise it might be supposed not to be a matter of any importance, so far as this defendant is concerned, what amount of damages you award against him. The United States took no part in the proceedings which resulted in the arrest of the plaintiff. It was the action of one branch of Congress, the House of Representatives, and that body passed out of existence six years ago. Three other Houses of Representatives have since been elected. No future House of Representatives is bound to consider itself responsible

for the action of its predecessors, and it may not choose to endorse that action. No money can be appropriated to reimburse or indemnify this defendant for anything which he shall be obliged to pay, except by the concurrent action of both Houses of Congress, approved by the President; and inasmuch as neither the Senate nor the President had any participation in these proceedings, neither may feel any moral responsibility, as neither is under any legal responsibility for the injury done to the plaintiff.

You, therefore, see that the defendant is the person alone to bear the responsibility for his actions, and it will be doing him great injustice to charge upon him the responsibility which you would only be willing to charge upon the United States, and which you would not charge upon him except in the belief that the United States would assume the obligation to pay. You are to deal with him, therefore, as personally and solely responsible, without hope or expectation of indemnity or reimbursement.

Another very important thing for you to do is to discriminate, as far as you can, between what was done by the House of Representatives or its committees or its members, and what was done by this defendant. For the former, the plaintiff has no redress except by appeal to the magnanimity of Congress or to its sense of justice. For the latter he has recourse against this defendant. The plaintiff may complain, with more or less justice, that the proceedings in the House of Representatives involved imputations against him and excited suspicions against his integrity, and that, in some respects, those proceedings, especially the proceeding which has been adverted to in the shape of a resolution, largely voted for, seeking to confine him to the regimen of the ordinary inmates of the jail, were insulting and exasperating and wounding to his sensibilities. This, of itself, would be a ground of consideration with the jury in a case where the damages might be exemplary; but what I wish to observe is, that these particular acts are not chargeable to this defendant. What the defendant did was, under a mistaken sense of duty we may say, simply to arrest and confine the plaintiff. That is the act for which he is responsible. You are to consider, in that connection, all the direct consequences, the inconvenience and other consequences to this plaintiff, resulting from that act alone, and not from antecedent action on the part of the House of Representatives or its committees or members. The importance of understanding that the real party with whom you have to deal is this individual de-



fendant is apparent therefore from several considerations. The first is, that the injury committed by him is different from the injury which may be attributed to the House of Representatives or its committees or members, and the measure of damages by which you would be guided in dealing with the one or the other would be different. If this case were a case for exemplary damages, that is, damages intended to make an example of the offending party, you would be apt to be governed by a very different rule if you were dealing with the United States than that which would control you in dealing with an individual citizen. If, for example, you had the plethoric Treasury of the United States to respond for an injury, you would adopt a very different figure as a means of making an example of the Government from that which would guide you in making an example of an individual citizen with the ordinary resources of such.

Now, we come to consider what is the rule of damages. It has been explained to you so fully by counsel that but very little more is necessary from me. That general rule is, assuming the same act of wrong to be done by different persons or at different times, if it is done with a wanton disregard for private right, or with circumstances of aggravation, as, for example, if the defendant had thrown the plaintiff into a filthy cell and made him there the companion of drunkards and felons, denying him every comfort and convenience, it would be a case for exemplary damages, such as would not only compensate the plaintiff, but would act as a punishment upon the defendant, and as an example to other people to deter them from wrongs of the same kind. But if, on the other hand, the wrong is committed under a sense of duty, under an honest *bona fide* belief that the party is simply discharging his duty, and with no aggravating circumstances, with nothing calculated to exasperate or wound the sensibilities of the party injured, there, the law looks upon it as a case for compensation only, and not for punishment or example.

Here I may refer briefly to the condition of opinion in reference to this particular proceeding at the time that it was commenced. You have heard something of the history of this question about the rights of Congress. As far back as the year 1818, a case arose very similar to the present one in some of its features. A man named Anderson was arrested under a warrant from the then speaker of the House of Representatives, who was no less a person than Henry Clay. He was brought to the bar of the House and detained

there under examination for some days, and finally discharged with a reprimand. He sued the sergeant-at-arms of the House to recover damages, precisely as this plaintiff has done in the present case. That case went to the Supreme Court of the United States, and that court held, in the year 1821, over sixty years ago, that the House of Representatives had the power to punish parties for contempt of its authority. The circumstances of that case were not very fully developed in the report of the opinion, but from that time down until the determination of the present cause, there was a general opinion in the profession, although perhaps not very definite, that either house of Congress had a right to protect its dignity and assert its authority by punishing for contempt or disobedience to its orders. Our own courts had acted under that impression. Perhaps thirty years after the case of Anderson and Dunn, one Nugent was committed to prison by the Senate of the United States for some disobedience of its orders or some contempt of its authority, and he was remanded to prison by the old circuit court of this District under the influence of that decision. When the present case came on for trial in this court, under the authority of that same case of Anderson and Dunn, this court felt itself bound to hold that the House of Representatives had the authority which it asserted. It was not until the case went before the Supreme Court, and they investigated the subject more thoroughly than ever before, that the conclusion was reached by that court, the highest legal authority in the land, that the case of Anderson and Dunn was erroneously decided so far as it would have application to cases of this kind. I mention these circumstances simply to show that there was at least ground for the belief that the House of Representatives had the authority which it proposed to exercise in this case, even on the part of members of Congress; that is to say, they even might be honestly mistaken on that question. How much more might not the defendant have been mistaken, as he is not to be supposed to be so thoroughly versed in the principles of law as to see the previous errors of the Supreme Court of the United States.

Now, if that was the case, I have to instruct you that if the defendant acted simply in obedience to the mandate of his superiors, and in honest belief that he was discharging a duty imposed upon him by his relations to the House, and that he acted without any aggravating circumstances in his dealings with the plaintiff, then it is a case simply for compensation. I believe it is the assertion of the plaintiff himself that the defendant did exercise all

the forbearance consistent with his sense of duty; and the plaintiff disavowed on the stand any resentment towards the defendant himself for anything excepting the actual circumstance of obedience to the mandate of the House of Representatives.

Then assuming that this is a case simply for compensation, the next question is: what are the elements of compensatory damages? You will understand that you must eliminate from this inquiry all those aggravating circumstances with which the defendant was not identified, all those proceedings in Congress which involved disaster to his credit, imputations upon his integrity and everything of that kind. The defendant in arresting and confining the plaintiff imputed nothing to him. He acted simply in obedience to higher authority. The fact of which the plaintiff has to complain against him is the fact of his confinement and all the disagreeable direct consequences to him.

In the first place the result to him was the unpleasantness of being confined at all under guard and being deprived of his liberty. Another thing was the unpleasantness of confinement in a jail with all the odious associations attached to that name and that place. On the other hand you must bear in mind the evidence in this case tending to establish the fact that the defendant not only exercised all due forbearance to the plaintiff, but took the trouble to mitigate the unpleasantness of his situation as far as possible. I say you must consider all these circumstances and in the light of them decide how much suffering and affliction the plaintiff experienced at the hands of the defendant, separate and apart from any of that distress of mind or exasperation of feeling that may have been produced by implied charges against him, contained in the action and language of the members of the House of Representatives. It is not necessary for me to dwell any more upon this point, except to say that you must consider what he suffered at the hands of this defendant in view of all the circumstances of the case; that you must take the whole conduct of the defendant into consideration and try to separate it from that conduct of other parties, for which he is in no way responsible. Of course the plaintiff is entitled to recover the additional expenses of living that were imposed upon him by this confinement; that is to say, all the necessary and reasonable expenses; the expense of restoring himself to health, and, as far as you can do so, you are at liberty to give him a money compensation for his actual suffering by infirmity. You must bear in mind, however, that a mere

transient distemper is not very easily measured in money and is not to be the subject of exaggerated damages, but simply those which will compensate, as far as you can judge what compensation there should be under such circumstances.

Again, as to his loss of time. If you find from the evidence that the plaintiff, by his personal exertions, could have earned and was earning so much per day or week or month while he was at liberty, and that by his confinement he was cut off from the opportunity of such earning, and it could not be earned in his place by his partners, so that his time, of a daily or weekly or monthly value, was actually lost, by virtue of this confinement, that is a proper subject for allowance.

Independent of the value of his personal time you are also entitled to consider what the value of his business was, and how far that was affected by his illegal confinement. I refer now to the business of the partnership in which he was interested. Here, again, I think it is proper that you should distinguish between the action of the House of Representatives and that of the defendant. I understood the plaintiff on the witness stand to complain and express it as his opinion, that the very fact of his being subjected once to an investigation would naturally beget the idea that he was liable to be investigated by Congress in the future, and that would deter customers from resorting to his firm with their business, and that his opinion was that it had done so. If you can consider the subject at all, you must distinguish between the effect of the action of Congress in this direction and the effect of the defendant's action. The action of Congress in investigating the private affairs of this plaintiff, you may assume, may have had the effect of deterring people from resorting to him afterwards with their business; but it does not follow that the mere act of the defendant in actually confining him for thirty-five days would have had the effect of deterring people from consulting him or dealing with him afterwards in reference to other private affairs. They may be very different things. That is a question for you to consider.

But another thing you must bear in mind, and that is, that in a matter of this sort you are to act not upon mere conjecture, but proof. It must be established to your satisfaction that the plaintiff's business was really affected by this illegal confinement, and the proof must be directed to the business of the plaintiff existing at the time of his imprisonment. You cannot deal with mere possibilities that lay in the womb of the future. Let me illustrate

this. Suppose the plaintiff, at the time of his arrest, was largely employed by property holders here as a collector of their rents and that he had a certain established income from that source, and that in consequence of his being confined in the jail all these parties took their business away from him. That would be a plain tangible fact, one susceptible of appreciation and estimation. You could say exactly what business was lost by him in consequence of the confinement. But suppose nothing of that sort existed, but the plaintiff simply said on the stand as a witness that but for the arrest he would in the future, he believed, have had certain business and would have realised a certain income. That is merely conjecture. It is speculative. The law does not allow evidence to be received of that description, nor does it allow a jury to consider these mere possibilities as grounds for assessing damages. I therefore said to you in the written instructions that while you may allow for any established business of value which was in your judgment destroyed by the action of the defendant, you are not at liberty to allow for speculative and conjectural gains which either he or you may suppose he might have made in the future, but which are not the subject of strictly legal proof.

As to this question of assessing damages I need not say that you are not to be governed by what any other jury may have done in any other case, but you are to act upon the evidence before you. The evidence varies so much in different cases that no one case is a precedent for a jury.

I have but one word more to say, and that is that the law never expects or contemplates that an injured party shall make a speculation out of his injury. In a case full of aggravation and outrage it does allow play for the feelings of a jury that are naturally excited by the manifestations of outrage upon the rights of other people. But in a case which is purely one for compensation, the law expects that you will not act under the influence of impassioned appeals to your feelings, but will act as dispassionate and cool-headed men, practical business men. All I have to say to you is that you are to consider all these circumstances with that disposition, and determine what will be, as far as you can say, adequate remuneration in money to this plaintiff for the actual injuries that have resulted to him from his arrest and imprisonment by this defendant, John G. Thompson. With that remark, I dismiss you to the deliberation of the jury room.

Mr. TOTTEN. Before the jury retires I desire to bring to your attention a statute which

I think you have overlooked. It refers to the attitude which Mr. Thompson will occupy, provided the judgment should be rendered against him. It is the act of March 3, 1875, chap. 130. sec. 8, 18 Stats., 401, and reads as follows, viz.:

Sec. 8. "That in any action now pending, or which may be brought against any person or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the district attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer; and all provisions of the eighth section of the act of July twenty-eighth, eighteen hundred and sixty-six, entitled, 'An act to protect the revenue, and for other purposes,' and also all provisions of the sections of former acts therein referred to, so far as the same relate to the removal of suits, the withholding of executions, and the paying of judgments against revenue or other officers of the United States, shall become applicable to such action and to all proceedings and matters whatsoever connected therewith, and the defence of such action shall thenceforth be conducted under the supervision and direction of the Attorney General."

The statute referred to in this act is section 989 of the Revised Statutes, which provides as follows:

SEC. 989. "When a recovery is had in any suit or proceeding against a collector, or other officer of the revenue, for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies there was probable cause for the act done by the collector, or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector, or other officer, but the amount so recovered shall upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

I think in view of these two statutes that your honor incorrectly stated to the jury the position Mr. Thompson will occupy in the event of a judgment against him.

THE COURT. No; I think not, and for this reason, that that law applies entirely to officers of the revenue.

Mr. TOTTEN. But the new statute says that it shall be enforced in these cases.

THE COURT. Does it say so?

Mr. TOTTEN. Yes, sir.

THE COURT. Read it over again.

(Mr. Totten again read the statute in question.)

Mr. TOTTEN. Your honor will see that that puts Mr. Thompson in a very different attitude from that in which you have placed him in the instructions to the jury just now, because there is an implied obligation of honor, at all events, that an appropriation shall be made. It is true, as your honor said, that Congress may not do it; but still there is a fair inference that they are in duty bound to protect Thompson.

THE COURT. All that I did say, was that they may not do it.

Mr. TOTTEN. That is right so far. Your attention, I thought had not been called to the statute: That is undoubtedly the construction, because Mr. Wilson is here representing the Department of Justice, in addition to Brother Corkhill, who did not need any assistance.

THE COURT. All that I said to the jury was that there is no legal obligation upon Congress to respond to the damages that are awarded against the defendant.

Mr. TOTTEN. Nor to to make any other appropriation.

THE DISTRICT ATTORNEY. And when the judgment is rendered, it will be a lien upon his property.

THE COURT. It will be a lien upon his property like any other judgment in any other case. Retire, gentlemen.

The jury rendered a verdict in favor of the plaintiff for \$60,000 damages.

A motion was made for a new trial on the grounds, that the verdict was against the instructions of the court and the evidence, and was excessive.

After argument by George B. Corkhill, Esq., J. M. Wilson, Esq. and Randolph Coyle, Esq. in support of the motion, and by D. W. Voorhees, Esq., Charles A. Eldridge, Esq. and Enoch Totten, Esq., in opposition thereto, the court took time to consider and, on the 24th of November, 1883, counsel for the plaintiff and for the defendant being in court, delivered the following opinion:

OPINION OF COX, J.,

*On the Motion to Set Aside the Verdict.*

I gave notice, gentlemen, that I would, this morning, dispose of the motion for a new trial in the cause of Kilbourn v. Thompson. This

is one of those cases in which a jury is very liable to be carried away by impulse. I do not mean bad impulse, but on the contrary, good and generous impulse, because in the direction of redressing wrong; but still one which, unless restrained, is apt to lead to excess; and it is, therefore, a case in which, I think, it is ordinarily the duty of the court to stand guard upon the jury and endeavor to keep them within reasonable limits. It was for this reason that, at the trial, I considered it my duty to charge the jury in such a way as to eliminate from the case the elements which ought not to be allowed to, but which were very well calculated to disturb the judgment.

I have listened to the arguments on the motion for a new trial with a great deal of interest, and had an opportunity to consider somewhat more maturely the views that were enunciated in my charge, which were my first impressions formed without the aid of discussion.

Some criticism has been made upon the charge in two particulars; first upon that part of it which admonished the jury to discriminate between the act of the defendant, and the acts of the House of Representatives, or of its committees or members; second, upon that part which, in substance, advised the jury that they must deal with this case as peculiarly a case against the individual defendant, in which he alone was responsible for the injury complained of, without any legal recourse for indemnity against the United States.

The first instruction was really but a repetition of one which had already been given in writing, at the instance of the defendant, and without objection on the part of the plaintiff. It is very difficult to keep the sins of the House of Representatives out of this case. The very narrative of the whole transaction, in connection with the case, would give the jury the idea that they were somehow called upon to punish the House of Representatives. That position is not taken by counsel, of course; but the whole sentiment of the argument was that the act of the defendant was only a part of the entire drama and was aggravated by the conduct of the House of Representatives, and by the very fact that they had commanded the arrest; and that the whole wrong complained of, from its very inception, ought to be visited upon the defendant. This was a line of argument that counsel would very naturally drift into, in view of the possible provision by law for an indemnity to the defendant for what he might have to pay. These considerations led to the instruction in the charge of which I am now speaking.

The wrong committed by the defendant was the arrest and imprisonment of the plaintiff without lawful authority. The actual injury resulting from this was entirely irrespective of the pretences or of the show of authority with which the defendant acted. It would have been precisely the same whether he acted under a warrant from the Speaker of the House of Representatives, or a *capias* from this court or a commitment from the police court of this District. In each of the cases supposed, he would be a *tort-feasor*, if his warrant were unlawful; and not more so in one case than in either of the others. The question by what authority he acted, is irrelevant to the issue of *quantum damnificatus*, except for the purpose of the defence, in the way of mitigation, or excuse. If the defendant can show that he acted without malice and in obedience to a supposed lawful authority, this may be used by him to avert exemplary damages, but how it can be used by the plaintiff to swell the damages it is difficult to perceive. The more exalted the source of authority, the more probable cause the defendant would have for his conduct; but the notion I am speaking of would seem to reverse all this and find in it the greater aggravation.

The fact that the House of Representatives commanded the plaintiff's arrest cannot certainly make it a greater wrong on the part of the defendant than if he acted without such authority, but it may, on the contrary, palliate it, as Judge Taney said in *Mitchell v. Harmony*, 13 Howard.

The wrong of the superior who commands cannot be added to that of the subordinate who obeys, so as to duplicate the latter's offence and call for double satisfaction; especially when, as in this case, the act of the superior is not an actionable wrong.

If the injurious act of the House in ordering the arrest is not to be considered as aggravating the defendant's responsibility, still less must other action of the House in which he had no participation. Otherwise his simple obedience to the Speaker's warrant would be held to relate back and make him *particeps criminis*, and joint *tort-feasor* in every slander uttered in debate, or other injurious act, of which plaintiff may complain; all of which would, on common law principles, seem to be absurd. Neither does the act of Congress of March 3, 1875, chap. 130, sec. 8, give any countenance to the idea that wrongs committed by the House can be redressed in this action. That act adopts for, and makes applicable to, this kind of action, the provisions of former acts, the material part of which is embodied in section 989 of the Revised Statutes in the following words:

"Sec. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue, for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

It may be safely assumed that Congress never intended, by this legislation, to confer on the citizen the privilege of suing the United States for a tort. The right to sue the Government, even in contract, was tardily and grudgingly bestowed when the Court of Claims was created, and then the litigation was committed to the arbitrament of a court and not a jury. To suppose that a single section in an appropriation act was intended to work such a revolution in the policy of the Government as to allow a citizen to sue the United States, in any federal court, and recover damages for a tort, to be assessed by a jury, would be quite extravagant. And yet, if, in a suit like the present, against a subordinate officer, the supposed wrongs done by Congress, or either House, or its personally irresponsible members, by their official acts, can be considered by a jury, or be allowed to influence their assessment of damages, a verdict rendered under such influence, and increased in amount by it, would be a recovery of damages for a tort of the Government, or a branch of it; and if, by the law, a judgment on such verdict is intended to be assumed by the United States, such judgment is thereby made as complete a recovery of damages in tort, against the United States, as if the Government were a party on the record.

Such a result was certainly never contemplated by Congress. They doubtless intended that, in a case of probable cause, and, therefore, of compensation, and not punishment, a judgment against the individual officer, such as would be rendered without reference to any action of the superiors, the Government, should be assumed; that is in a suit which should be essentially, as well as in form, a suit against the individual; and, if so, then the fact that such judgments are provided for in the law is not relevant to the issue of damage, and ought not to be considered by the

jury or allowed to influence them; but they ought to deal with the case as if no such possibility existed. This ought to be the case, for the further reason, that the defendant has no certain recourse against the United States, but it not only depends on the disposition of Congress to make appropriations, but even, under the law, it is conditional upon the view which the court may take and certify as to the defendant's conduct, in reference to the existence of probable cause for his action. These views are fortified by the case of *Andrae v. Redfield*, 12 Blatchford, 416. That was a bill in equity brought to enjoin a collector from setting up the plea of limitation to a number of actions against him for things done in the course of his official duty. It was urged on the part of the plaintiff that the plea was inequitable in view of the nature of the action, and especially with reference to the ultimate responsibility of the Government. The court say:

"It is proper to add, in support of the view that the actions at law in question are in fact, as well as in form, actions against the defendant, that, if judgments be recovered thereon, they become liens upon his real estate and although, by a provision in the 12th section of the act of Congress of March 3, 1863, which is now found in section 989, Rev. Stats., it may, upon certain conditions, become the duty of the Secretary of the Treasury to pay the judgments, it cannot be now asserted in advance of the trial, that such duty will become absolute. Suppose that such payment should not, in fact, be made. Can it be said that the defendant has no interest in the question of recovery or no recovery against him; and, especially, supposing that the court before which the trial may be held should not deem the case, as developed on the trial, one in which a certificate of probable cause ought to be granted, how then is the defendant to avoid the payment, protect his property from execution, or relieve his estate from the lien of the judgment? We are not advised that there is anything in the Revised Statutes of the United States which makes these actions any less actions against the defendant; and sections 3009-3014, do not seem to us to change the nature of these actions or deprive the defendant of any defence which he would otherwise be entitled to."

I, therefore, can see no error in the instructions I gave to the jury, not to consider any complaints against the House of Representatives, and to deal with the defendant as the sole party to respond for the wrong complained of in this suit, without any ultimate recourse for indemnity.

We come now to the facts of the case itself. There are three injuries complained of in this action, excluding what, under the law, I held to be excluded from consideration, such as the claim for counsel fees, etc. First, the injury to the business of the plaintiff. Second, the injury to his health. Third, the injury to his feelings.

I do not see how this verdict could have been founded, and I will not assume that it was founded, upon any evidence relating to the business of the plaintiff. The only evidence that we had on that subject was the testimony of the plaintiff himself, to the effect that he believed that the disposition manifested in Congress to investigate his affairs disaffected customers toward him, and estranged them from him, on account of the natural apprehension that their own business might be investigated if they should entrust it to him. This view was only an opinion which no facts could be given to sustain, and would not be evidence on which a jury could act. It certainly furnished no material for computation. And even if that opinion was well founded, it is to be observed that the mischief apprehended originated and ended in the House of Representatives and its committees, and it may be said to have been completed before this defendant came upon the scene at all. I am unable to see how he could, in the nature of things, have done any damage to the business of the plaintiff, except by taking him from his business and preventing him from giving his personal attention to it.

There is no evidence in the case at all tending to show, or offered for the purpose of showing, that his mere absence from his business had any evil effect upon it; and it is hardly credible that even if it had been in a prosperous condition, still less, in the condition which the testimony demonstrated it to have been in, that the temporary absence of the defendant, when he had two partners, both competent business men, and had unrestricted intercourse with them, could have had the effect of destroying his business. I, therefore, assume that this part of the subject probably did not enter into the computation of damages by the jury.

With regard to the sickness which may be said to be a factor in the claim, including medical expenses, there was some evidence. The evidence was that the plaintiff contracted a fever which lasted several months. This fever did not confine him to his bed, or, as I remember, even to his house, a great deal, and did not occasion any acute suffering, but simply general depression. It yielded in the course of time to treatment and the influence

of travel and change of scene. There was some expense incurred, but it is very plain, I think, that no appreciable part of this verdict can be attributed to that.

It is not to be doubted, I think, that almost the entire verdict, and I think for all practical purposes we may say the entire verdict, was founded upon the supposed injury to the person and the outrage to the feelings of the plaintiff. This was the main theme of the argument and the ground upon which the strongest appeal was made to the jury. The question then is, whether the verdict is to be considered excessive, as claimed on the part of the defendant, or merely as adequate compensation for this kind of injury.

A difficulty undoubtedly presents itself here. The courts have held that injury to the feelings is the subject of *compensatory* and not *vindictive* damages only. The trouble arises in the endeavor to draw the line between compensation and vindictiveness. There cannot be an injury to a man's feelings without causing not only distress, but resentment also, and the difficulty here is to draw the line between alleviating the distress and gratifying the resentment, and yet courts and juries are bound to draw this line according to the circumstances of each particular case.

On the subject of excess, a number of precedents have been cited on the part of the plaintiff. We have been referred to the celebrated "General Warrant Cases," as they are called, which arose in the years 1763-5-9. These were cases growing out of what would be universally considered very high-handed outrages. The Secretary of State in England, who was not clothed with a shadow of judicial authority, undertook to issue his warrant to seize and search the papers of various subjects upon suspicion; and not only that, but issued his warrant to the king's messengers, as they were called, who were not officers of the law at all, authorizing them to arrest certain parties who should by them be discovered to be guilty of certain offenses, that is, to be concerned in the publication of the *North Briton*, which was considered a seditious and libellous sheet. Under these warrants a number of printers were arrested, and finally Mr. John Wilkes was arrested, and actually committed to the Tower. They brought suits against the king's messengers and recovered damages against them ranging from £300 to £400. Then, again, suit was brought by Wilkes against the under Secretary of State, who had been quite officious in these proceedings, and damages were recovered against him to the extent of one thousand pounds. Finally, Wilkes brought his suit against Lord Halifax,

the Secretary of State himself, and recovered damages to the extent of four thousand pounds, or twenty thousand dollars.

These verdicts were not based upon any assessment of the value of time, or the business affected by these transactions. They were essentially verdicts for exemplary damages, because the acts complained of were considered gross and outrageous wrongs. In one of the cases for which I think, a verdict was given for either three or four hundred pounds, the Lord Chief Justice of the Common Pleas, said, upon a motion to set aside the verdict for excessive damages, that "if the jury had been bound by their oath to consider the personal injury only, perhaps twenty pounds damages would have been sufficient. But the mere personal injury done to the plaintiff, or the inconsiderableness of his station and rank in life, did not appear to the jury in that prominent light in which it might have been presented. They saw only the majesty of the law invaded; they saw only the exercise of arbitrary power in violation of Magna Charta and an attempt at the liberty of the kingdom, by insisting upon the legality of the general warrant." These were the ideas that struck the jury, and it was held that they were therefore justified in giving exemplary damages.

The distinction between exemplary and compensatory damages was very imperfectly outlined in the jurisprudence of the common law of that date. It has been better ascertained and certainly more definitely stated since. On this subject I think it proper to refer to one or two cases in the Supreme Court.

In the case of *Day v. Woodworth et al.*, 13 Howard, 371, the court said:

"In actions of trespass, when the injury has been wanton and malicious, or gross and outrageous, courts permit juries to add to the measured compensation of the plaintiff which he would have been entitled to recover, had the injury been inflicted without design or intention, something further by way of punishment or example; which has sometimes been called smart-money."

In the case of the *Philadelphia, Wilmington & Baltimore R. R. Co. v. Quigley*, 21 Howard, 213, which was an action for libel, in a published report, the court says:

"In *Day v. Woodworth*, 13 Howard, 371, the court recognized the power of a jury in certain actions of tort to assess against the *tort-feasor* punitive or exemplary damages. Whenever the injury complained of has been inflicted *maliciously or wantonly* and with circumstances of contumely or indignity, the jury are not limited to the ascertainment of a simple compensation for the wrong committed



against the aggrieved party. But the *malice spoken of in this rule is not merely the doing of an unlawful act. The word implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations.*"

In the case of the Milwaukie & St. Paul R. R. Co. v. Arms et al., 1 Otto, 91, which was an action for injury on the railroad, the court applies the rule before stated in Day v. Woodworth, and says, that no exemplary damages ought to be allowed unless the injury be wilful or the result of reckless indifference to the rights of others.

In the last case on the subject, to which I will refer, the question is still further considered. That is the case of Beckwith v. Bean, in 98 United States. That was a case where certain officers of the army during the war arrested a man named Bean upon suspicion of defrauding the Government in the matter of bounties and procuring desertions. The court reversed the court below for not admitting evidence tending to show actual guilt, but which was not known at the time of the arrest. The court below had rejected that evidence upon the ground that it could not have entered into the question of the motive of the offending party. They say:

"This evidence tended to rebut the presumption of malice which might arise from the simple arrest and imprisonment, unaccompanied by any explanation of the reasons therefor. In connection with evidence which was admitted without objection, it seems to present a case which, under the law, did not call for or admit of vindictive or punitive damages against the plaintiffs in error."

A little further on the court says:

"If Captain Henry in good faith believed that Bean was guilty of such misconduct in the enlistment of the two deserters, it was his duty to communicate the facts and circumstances to his superior officers. If the order to Beckwith to arrest Bean was given by him in good faith, believing it to be his duty to obey the command of his superior officer, General Pitcher; if Beckwith executed the order under a like belief, and in like good faith; if the arrest was made and the imprisonment ordered from an honest purpose to guard the public interests and protect the army from the evil consequences of sham enlistments and frequent desertions—they were entitled, by every consideration of justice, to stand before the jury in a more favorable light upon the question of damages than they would or should have stood had they been actuated by ill-will or sought to oppress one whose conduct had not justified the conclusion that he

had violated the law. Every fact, therefore, which served to illustrate the motives which governed the plaintiffs in error in committing the trespasses complained of, and every fact which fairly conduced to prove the existence or non-existence of just grounds for imputing to Bean the fraudulent and illegal acts charged against him, and which were assigned as the cause of his arrest, were competent evidence, not in justification, but in mitigation of damages. It is the settled doctrine that '*damages are graduated by the intent of the party committing the wrong.*' It is equally well settled that in the absence of gross fraud, malice or oppression, in cases of trespass to person or estate, the jury should restrict damages to compensation or satisfaction for the actual injuries sustained."

Further on, the court adopts the language of the Supreme Court of Ohio in the case of Simpson v. McCaffrey, 13 Ohio, 508, as follows:

"The principle of permitting damages in certain cases to go beyond naked compensation, is for example, and the punishment of the guilty party for the wicked, corrupt, and malignant motive and design which prompted him to the wrongful act. A trespass may be committed from a mistaken notion of power, and from an honest motive to accomplish some good end. But the law tolerates no such abuse of power nor excuses such act; yet, in morals and the eye of the law, there is a vast difference between the criminality of a person acting mistakenly from a worthy motive, and one committing the same act from a wanton and malignant spirit, and with a corrupt and wicked design. Hence, where a jury are called upon to give smart-money or damages, beyond compensation, to punish the party guilty of the wrongful act, any evidence which would show this difference, or rather all the facts and circumstances which tend to explain or disclose the motives and design of the party committing the wrongful act, are evidence which should go to the jury for their due consideration."

In the light of these authorities, I think that I make no mistake in the definition of the distinction between exemplary and compensatory damages, and in giving instructions to the jury in such terms that in view of the facts tacitly, if not expressly conceded, in this case, they could not, without disregarding both law and evidence, render a verdict for exemplary damages. If they did mean to do so, I should think it would be sufficient ground for setting aside the verdict.

I will assume, however, that the verdict was intended to be compensatory only, and will discuss the question in that aspect.



I have no guide upon this question except judicial experience and such common sense as has been vouchsafed to me. I cannot form an estimate of the proper rule of damages in this case, except by comparing it with others, and from the point of view that the trespass complained of here must be treated, without reference to the source of authority under which it was committed. Suppose, for instance, that the plaintiff had been arrested by a marshal of this court, under a void process, and put into jail. The question is, whether in such a case a verdict of this description, as satisfaction for wounded feelings and compensation for the indignity to the person, is reasonable or excessive.

A number of cases have been referred to on the part of the defense, in this connection, which are more or less like the present case. In the first place, there are some actions for malicious prosecution or false arrest upon unfounded charges. The case of *Wiggin v. Coffin*, 3 Story, has been referred to. That was an action for malicious prosecution for conspiracy, in which it appeared that the plaintiff had been carried two hundred and fifty miles from his home, had been kept under arrest eighteen days, and had been brought four times before a court. The court found that there was no probable cause, so that it was a plain case for vindictive damages; yet a verdict for \$1,500 was set aside as excessive.

The case of *Rauk v. McGregor*, 32 N. J. L., was an action for arrest on a charge of larceny. The verdict was for \$3,000, and it was set aside.

The case of *Walker v. Martin*, 43 Ill., 508, was an action brought for malicious prosecution on a charge of larceny. The plaintiff was in prison twenty-one days, and the evidence showed malice and no probable cause, as the court thought. There, a verdict of twenty thousand dollars was set aside.

In the case of *Brown v. Chadsey* 39 Barb., 293, the action was for arrest by a police officer upon mere information. The arrest was entirely groundless and a verdict was rendered for \$2,000, which was set aside.

These cases are not exactly like the present case. They did not involve any infringement of a fundamental, constitutional right of a citizen. They were cases of arrest and false imprisonment on charges which, if they had been sustained, would have apparently justified the arrest. The grievance in these cases was in making false charges, but yet they are pertinent on the question of satisfaction or compensation for wounded feelings. There is no sort of comparison between the amount of suffering a man must experience in being

arrested on a charge of disgraceful crime and being arrested for contempt of court or any other authority. Frequently people would sympathize with a man in his contempt of court or other authority. Certainly no such arrest involves the least imputation on the honor or integrity or credit of the party arrested.

But the class of cases most akin to the present are those of arrests made by military authority during war, without any warrant of law. The history of the country has undoubtedly abounded with cases of this sort and the outrages upon personal liberty have been just as great as in any case. I do not believe that many of those cases have found their way into the law books. I have been referred to two or three. One is a case that occurred in 1814, during the war with Great Britain, *McConnell v. Hampton*, reported in 12 Johnson, 234. The plaintiff in that case was arrested on a charge of treason, upon suspicion, was confined for five days and was compelled to work. He obtained a verdict for \$9,000, and that was set aside as excessive.

During the late civil war, a man named *McCall* was arrested by General *McDowell*. The case is found in 1 Deady, 233. He was arrested on suspicion, was confined with the prisoners and was compelled to work with them in the gang. I forget what length of time he was confined, but it was for a considerable time. The damages were assessed by the court, and he was allowed ten dollars per day for the loss of time, and three hundred dollars as compensation for the indignity.

But the most conspicuous of the cases is that of *Beckwith v. Bean*, to which I have already referred. I say, most conspicuous, because it came to the Supreme Court, and it is well to look at that case as stated by Justice *Field*, who dissented. I will read from page 285.

"It appears from the uncontradicted evidence in the record that on the 11th of November, 1864, whilst returning from a trip to Boston to his home in the province of Quebec, he was arrested in a passenger car near Wells river, in the State of Vermont, by the defendant *Beckwith*, without any warrant, or process of law, and taken to *Beckwith's* residence in *Sutton* in that State: that he was detained there during the night under the charge of keepers; that his father, who lived at the distance of about fifteen miles, and for whom he had sent, arrived during the night, but that *Beckwith* refused to allow them to have an interview, except in his presence; that on the following day

he was forcibly taken, by order of the defendant Henry, and placed in the State's prison at Windsor, where he remained until the 26th of April, 1865, a period of nearly six months, when he was admitted to bail and released from imprisonment; that during this period he was locked up at night, and, for the first few days, in the day time also, in a narrow and scantily furnished cell, being one in which convicts were confined at night; that after the first few days he was allowed, upon his complaint of the coldness of the cell, to spend the day in the shops where the convicts worked, but he was required to go out and to return when they did, and at no time to be out of sight of a keeper, and not to go on the corridors or in the yard for exercise; that the food offered him was the fare served to convicts, which he could not eat, and that afterwards he obtained his meals from the keeper's table by paying a small sum each week; and that, during this period, no complaint against him was filed with any magistrate; he was held simply upon the order of the defendants."

"The record also shows that the plaintiff, throughout his imprisonment, made constant efforts in various ways to obtain a trial or a release on bail, which he was able and willing to furnish; and that eleven journeys were made by his father from the northern part of Vermont to Windsor and Brattleboro for that purpose. Among other efforts, the plaintiff appealed by letter to General Dix, the commander of the department, to order him to be brought to trial and to give him an opportunity to prove his innocence. But no trial was allowed him—that right which belongs or ought to belong to every one, even the humblest in the land, was denied to him—a born citizen of the United States.

"To add to the enormity of this case the district attorney of the United States for Vermont states, in his testimony, that there were many other cases in his district during the war, of persons charged with inciting or assisting soldiers to desert, and that they were all turned over to him to be prosecuted, and that they were prosecuted by him in the civil courts; but that he knew nothing of this case until April, 1865, and that soon afterward the plaintiff was released on bail."

In that case the verdict was \$15,000, and that is the highest verdict which has been brought to my attention.

It is, perhaps, just as well to institute a comparison between the circumstances of that case and this. The confinement of Bean, as will be seen from a perusal of the facts, was

a very grievous one. He was confined with convicts, offered only prison fare, and denied every comfort. The arrest of the plaintiff in this case was scarcely more than a friendly invitation. Certainly, there were no circumstances of humiliation or degradation about his imprisonment. In the Beckwith and Bean case the plaintiff recovered only \$15,000 for nearly six months imprisonment. In the present case there was a verdict of \$60,000 for thirty-five days imprisonment. In other words, if an equation of time and amount be stated, it will be seen that the plaintiff in this case recovered twenty times more than the plaintiff in the Bean case, and that case is the most considerable one which has been brought to my attention.

It must be apparent then, that this verdict, as regards the amount, is certainly without precedent. It may be said that the case is without precedent; but that, I think, is entirely a mistake. The action of the House of Representatives was hardly precedent, but Congress is not being tried in this case. The act of the defendant had many precedents. It is difficult to resist the impression that the jury in this case thought they were inflicting punishment upon, or making an example of, the House of Representatives. If they could do it, I am not prepared to say that the verdict in the first trial would be one cent too much. But that cannot be discussed in this case. In the light of all the precedents, I cannot resist the conviction that the verdict in this case was excessive. I come to this conclusion with the greatest reluctance. I hoped at the outset that the verdict would be one which could be sustained, and had it been rendered for any amount from \$10,000 to \$20,000, or perhaps more, although doubtless most courts would have considered that extravagant, I should not have interfered with it. Under the circumstances, I deem it to be my imperative duty to set the verdict aside, and award a new trial.

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*Contract: Refusal of agent to accept; fraud.*

—A engaged to furnish a railroad company with ice, the ice to be good, clear solid stock, and subject to the inspection and approval of an agent of the company named by it, and that agent rejected the ice tendered. *Held*, that if the decision of the inspector rejecting the ice, whereby no ice was in fact delivered, was in bad faith, it was fraudulent, and the company was liable to A in damages for breach of the contract. [Lynn v. B. & O. R. R. Co. Court of Appeals of Maryland. September, 1883.]

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

- Nov. 24, 1883.  
24896. Washington Gas Light Co. v. District of Columbia. Account, \$3,306.44. Pliffs atty, W. B. Webb.
- Nov. 27, 1883.  
24896. A. F. Moran v. Mrs. V. Richard. Certiorari. Defs atty, L. Tobriner.
- Nov. 28, 1883.  
24897. Lizzie W. Gray v. Clayton McMeta. Replevin. Pliffs atty, Miller and Jackson.
- Dec. 1, 1883.  
24898. Augustus P. Crenshaw v. The District of Columbia. Damages, \$10,000. Pliffs attys, Hinton & Chandler.
24899. Alfred Pratt v. Wm. A. Slippy. Damages, \$5,000. Defs atty, John A. Moss.
24900. Robt. Young et al. v. Wm. A. Slippy. Damages, \$5,000. Pliffs attys, Hewlett & Shea.
24901. Charlotte Biverly v. David Garner. Judgment of Justice Moss, \$2,000. Pliffs atty, Chase Roys.

### IN EQUITY.—New Suits.

- Nov. 23, 1883.  
8798. ———  
8799. George Taylor v. W. B. Moses et al. For account. Com. sol., R. Christy.
- Nov. 24, 1883.  
8800. John W. Miller v. Annie M. Miller. For divorce. Com. sol., L. Browning.
8801. Mary E. Gallant v. Francis O. Gallant et al. To ratify contract, &c. Com. sol., Jas. G. Payne.
8802. David Craig v. Melinda Craig. For divorce. Com. sol., C. Carrington.
- Nov. 26, 1883.  
8803. Elvira Butler v. Robert Butler. For divorce. Com. sol., J. A. Smith.
8804. Mary E. Edwards v. Edgar F. Edwards. For divorce. Com. sols., Elliot & Robinson.
8806. Maria F. Dubois v. Matthew N. Murray et al. Injunction. Com. sol., J. G. Bigelow.
- Nov. 28, 1883.  
8806. John W. Kennedy et al v. William Beck et al. Creditors' bill. Com. sols., Edwards & Barnard.
- Nov. 30, 1883.  
8807. Caroline Newgarten v. Herman Newgarten. For divorce. Com. sol., W. F. Mattingly.
8808. William B. Webb et al. v. Gracie A. Dulaney et al. To construe will of Thos. J. Abbott. Pliffs atty, W. B. Webb.
8809. Harris M. Combs et al v. Catherine O. Combs. For partition. Com. sol., J. T. Cull. Defs sol., James Hoban.
8810. Richard Adam, Executor, v. David D. Cone. For deeds execution on sub lot A, square 623. Com. sol., H. W. Garnett.
8811. Sarah E. Herbert v. Washington B. Williams et al. To confirm contract of sale. Com. sol., E. H. Thomas.
- Dec. 1, 1883.  
8812. Rose Griffin v. Oliver Griffin. For divorce. Com. sol., B. J. Darnelle.
8813. Sadie W. Walsh v. Harry M. Walsh. For divorce. Com. sol., C. Carrington.
8814. Phebe A. Clark v. Richard Clark. For divorce. Com. sol., C. Carrington.

### PROBATE COURT.—Justice Hagner.

- Nov. 30, 1883.  
Estate of Susanna V. Walker; citation against administrator returned served.
- Estate of Benjamin F. Neff; proof of publication filed, and order appointing Franklin G. Neff administrator on bond of \$1,200.
- Estate of David Welsh; request of C. S. Ford that he be heard in the matter of granting administration.
- Will of Violetta L. Sprigg filed and proven.
- Estate of Hart L. Straesburger; answer to rule to show cause filed by administratrix.
- Another will of George Gernhardt, dated August 31, 1882, filed; order admitting will of November 13, 1882, to probate, and letters of administration issued to John E. McNally on bond of \$6,000.
- Estate of Sarah E. Barber; will admitted to probate and letters testamentary issued to William D. Barber on bond of \$900.
- Estate of Stephen H. Mirick; executor bonded and qualified.
- Estate of Resin A. Miller; order allowing administrator a credit of \$354 for bonds used by the widow.
- In re Elizabeth Gladmon, guardian; order amending order of November 2, 1883.

Will of Henry McGivern filed for probate.  
Estate of Mary A. Owen; order appointing Cornelia Raborg administratrix on bond of \$7,000 and guardian on bond of \$10,000.

Estate of Cyrus D. Fletcher; order of sale.  
Estate of Emery W. Dubose; order of sale.  
In re Jeconius F. Gladmon; order appointing petitioner guardian on bond of \$1,000.

Estate of Samuel D. Leib; executrix authorized to transfer bonds.

### Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business, November 27, 1883.

In the matter of the estate of William Hicks, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Harriet Hicks.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDELL, Register of Wills.

BENJ. J. DARNELLE, Solicitor. 483

CHANCERY SALE OF A THREE-STORY AND BASEMENT BRICK DWELLING, WITH BAY WINDOW, No. 1811 ELEVENTH STREET NORTHWEST.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in equity cause No. 8,761, Taylor v. Taylor et al., on the 16th day of November, 1883, we will sell, at public auction, in front of the premises, on TUESDAY, December eleventh, 1883, at four o'clock p. m., lot numbered five (5), in John M. Sims', executor, subdivision of square numbered three hundred and thirty-nine (339), in the city of Washington, District of Columbia, together with the improvements, &c. Said lot fronts 19 feet 6 inches on 11th street northwest, by a depth of 94 feet 10 1/2 inches.

Terms, as prescribed by the decree: One-third of the purchase money in cash and the residue in three equal instalments, payable respectively in six, twelve and eighteen months, with interest at six (6) per cent per annum from day of sale, for which the purchaser shall give his promissory notes, secured by a deed of trust on the property sold. A deposit of \$100 will be required at the time of sale, and all conveyancing and recording at cost of the purchaser. If terms of sale are not complied with in seven days, the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser after five days' advertisement.

IVORY G. KIMBALL,  
No. 1341 F street northwest; } Trustees.  
FRANCES MILLER,  
No. 460 Louisiana avenue. }

481 J. T. COLDWELL, Auctioneer.

THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles H. Hayden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1883.

CHARLES W. HAYDEN, Administrator.

F. W. JONES, Solicitor. 482

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benjamin F. Neff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1883.

FRANKLIN G. NEFF, Administrator.

P. B. STILSON, Solicitor. 483

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 27th day of November, 1883.

MARY ELLA EDWARDS }  
v. } No. 8904. Eq. Doc. 23.  
EDGAR FRANCIS EDWARDS.

Upon hearing the original petition in this cause, the return of the Marshal on the summons, and the affidavit of Mrs. Mary Jones, as to the absence of the defendant from the District of Columbia, it is, by the court this 27th day of November, A. D. 1883, on motion of Elliot & Robinson, solicitors of petitioner, ordered that the defendant, Edgar Francis Edwards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said rule-day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 48-3 R. J. Meigs, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 20th day of November, 1883.

EMILY F. SCOTT }  
v. } No. 8797. Equity Docket.  
FRANKLIN SCOTT.

On motion of the plaintiff, by Mr. James E. Clements, her solicitor, it is ordered that the defendant, Franklin Scott, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 47-3 R. J. Meigs, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 20th day of November, 1883.

WILHELMINA RIESNER }  
v. } No. 8795. Eq. Doc. 23.  
ANNA O'HARA ET AL.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Julia Eddy nee O'Hara, Susan O'Hara, Virginia O'Hara and George O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 20th day of November, 1883.

WM. CLAUDE BARRETT }  
v. } No. 8782. Eq. Doc. 23.  
MARY E. BROWN ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, Mary A. Bilyer, Sanford Bilyer, Oskaloosa F. Slater and John W. Slater and George T. Brown, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.

In the matter of the Estate of John G. Stephenson, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Jared O. Nichols.

All persons interested are hereby notified to appear in this court on Friday, the 14th day of December next, at 11 o'clock, a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: 46-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 19th day of November, 1883.

EMMETT C. ADAMS }  
v. } No. 8786. Eq. Doc. 23.  
EPHRAIM S. STODDARD ET AL.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendants, Ephraim S. Stoddard and Charles D. Sturtevant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. Meigs, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphans' Court Business. November 16, 1883.

In the matter of the Estate of Mary G. Harris, late of Washington City, in the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by William Gray, one of the next of kin of said deceased.

All persons interested are hereby notified to appear in this court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
HANNA & JOHNSTON, Solicitors. 46-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Martin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 33d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of November, 1883.

LUTHER MARTIN, Administrator.  
EDWARDS & BARNARD, Solicitors. 47-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, the 24th day of October, 1883.

AMOS BINNEY ET AL. }  
v. } No. 8764. Eq. Doc. 23.  
MARIANNE H. BINNEY ET AL.

The Marshal having returned the summons for the herein named defendants, "Not to be found."

On motion of the plaintiffs, by Mr. Fred. W. Jones, their solicitor, it is ordered that the defendants, Amelia Dawson, Brooke Dawson, Margaret J. Beall, Thomas S. Beall, Christiana Thomas, Harriet B. Chesley, Harriet De B. Scott, Edward Williams, John Chandler Smith, Leonard Mackall, Harriet M. Taylor, Margaret M. Key, Mary S. Compton, William W. Mackall, Covington Mackall, Benj. F. Mackall, Anna M. May, Virginia McCabe, Robert M. Mackall, Benjamin Mackall, Chas. M. Mackall, Richard L. Mackall and Mary J. Palmer, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. 43-6 Test: E. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

FRANK B. SMITH }  
v. } No. 8,410. Equity.  
SUSAN BURCH ET AL.

Job Barnard, trustee herein, having reported a sale of the east 20 feet front of lot 13, square 377, in the city of Washington, in the District of Columbia, to Mary Rocca, for \$10,025.

It is, this 7th day of November, 1883, ordered, that said sale be confirmed unless good cause to the contrary be shown on or before the 7th day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. A. B. HAGNER, Asso. Justice.  
A true copy. Test: 46-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

ROBERT FORTNER }  
v. } No. 8,029. Equity.  
JOHN H. LEONARD.

Upon consideration of the report of James L. Davis, trustee in this cause, of the sale of part of lot six (6), in square twenty-nine (29), to William Casley, for \$1,000, it is, by the court this fifth day of November, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 19th day of December, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 46-3 R. J. Meigs, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah A. Kibbey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1883.

JOHN P. FRANKLIN, Executor.

CALDERON CARLISLE, Solicitor.

47 3

**THIS IS TO GIVE NOTICE,**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Stott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of November, 1883.

CHARLES J. STOTT,

SAMUEL G. STOTT,

Executors.

47.3

WM. B. WEBB, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.** Holding a Special Term for Orphans' Court Business. November 23, 1883.

In the case of Theodore Sheekle, Executor of Patrick F. McCarthy, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of December, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 47 3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

FANNY STEPHENS

} Equity. No. 5677.

MARY A. PROCTOR ET AL.

Brainard H. Warner and Charles O. Glover, trustees, having reported that they have sold lot numbered four (4), in W. W. Corcoran's subdivision of original lots two (2) and three (3), in square numbered three hundred and thirty-seven (337), with the improvements thereon to Patrick R. Daly, for the sum of \$1,415: It is, this 24th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, A. D. 1884. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court A. B. HAGNER, Asso. Justice.

A true copy. Test: 47-3 R. J. MEIGS, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** the 14th day of November, 1883.

LEIGH ROBINSON, Complainant

DR. JOHN KURTZ, THOMAS KURTZ AND ANNA R. KURTZ HIS WIFE, JANE MOSHER SMOOT AND WILLIAM S. SMOOT HER HUSBAND, KATHERINE B. CHILDS AND ALLEN CHILDS HER HUSBAND, AND MINNIE H. KURTZ, Defendants.

No. 5783.

Eq. Doc. 23.

It appearing to the court that none of said defendants can be found in this district:

On motion of the complainant, by Mr. Conway Robinson, jr., his solicitor, it is ordered that the defendants, Dr. John Kurtz, Thomas Kurtz and Anna R. Kurtz, his wife, Jane Mosher Smoot and William S. Smoot her husband, Katherine B. Childs and Allen Childs her husband, and Minnie H. Kurtz, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.

A true copy. Test: 46.3 R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William G. H. Newman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of November, 1883.

MARY A. NEWMAN

RAPHAEL C. GWYNN,

Executor.

46-3

CHAS. A. ELLIOTT, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** holding a Special Term for Orphans' Court Business. November 16, 1883.

In the matter of the Estate of Patrick Hanaphy, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by James Biggins.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDALL, Register of Wills.

ANSON S. TAYLOR, Solicitor.

46 3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,** holding a Special Term for Orphans' Court Business. November 16, 1883.

In the matter of the Will of Hyron A. Kidder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Thomas Greer.

All persons interested are hereby notified to appear in this Court on Friday, the 14th day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: H. J. RAMSDALL, Register of Wills.

ANSON S. TAYLOR, Solicitor.

46 3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

URTON H. RIDENOUR

} No. 5660. Eq. Doc.

CHARLES E. MCLELLAND ET AL.

The trustee in this cause having reported the sale of the property in the county of Washington mentioned in said cause to Charles R. Vernon, for seventeen hundred and ten dollars, it is, this thirteenth day of November, A. D. 1883, ordered, that the sale reported be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the fifteenth day of December, 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said fifteenth day of December, 1883.

By the Court. A. B. HAGNER, Asso. Justice.

A true copy. Test: 46.3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

F. S. AND T. COMPANY

} Equity. No. 5,136.

JOSEPH BROOKS ET AL.

Upon consideration of the report of James T. Wormley, trustee of the sale of lot 4, in section 1, of the Barry Farm, to George W. Stickney, trustee, for \$301: It is, this 13th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 13th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of December, A. D. 1883.

By the Court. A. B. HAGNER, Asso. Justice.

Truecopy. Test: 46 3 R. J. MEIGS, Clerk.

# Washington Law Reporter

WASHINGTON - - - - - December 15, 1883

GEORGE B. CORKHILL - - - - - EDITOR

ONE of the statements of defence in the case of *McFadden v. Lynch* (17 Ir. L. T. R., 93), raised the question of privilege, in relation to the alleged defamatory words upon which the action was based, and which imputed that the plaintiff had stolen the defendant's turf. It set forth that the defendant was possessed of a quantity of turf, of a certain quality, color and description, and from time to time portions of the turf were stolen and carried away; and upon the night of the 17th or the morning of the 18th of February, a further quantity was stolen and carried away; and after the defendant had discovered the theft, he was in the house of the plaintiff, and there saw two bags of turf, which he examined, and found to be of a color, quality and description, so similar to the turf stolen, that he, *bona fide*, believed they were his turf, and that they had been stolen by the plaintiff; and he requested that they should be sent back by the plaintiff, but the plaintiff did not do this, but continued to keep the turf; whereupon defendant sent for constable Hickey, who was in charge of the police district, and in command of the police in that district, in order to get back the said turf, and informed the police of the said theft; and the said constable and a sub-constable, under his orders, thereupon came to the defendant, and he informed them of the above facts; that in so doing he spoke the words complained of in the statement of complainant, to the constable and sub-constable, *bona fide*, and believing them to be true, and without malice, and in order to get back the said turf, which he believed to be his turf, and to inform the police of the theft which he, the defendant, believed had been committed, and for no other purpose whatsoever.

On demurrer, the defence was held to be good, as showing that the words were spoken on a privileged occasion, notwithstanding the presence of the sub-constable; that it was a

clear case of communicating a matter to the proper officer of the law, who was bound to put the law in operation.

THE Supreme Court of California, in the case of *Troia*, on *habeas corpus* (16 Rep., 619), the prisoner being charged with murder, on application for bail, it was held by the court that the action of the jury ought not to be anticipated by discharging the prisoner from custody, with or without bail, upon evidence which the court was not prepared to say, was so insufficient that a verdict requiring a capital sentence, based upon it, should not be permitted to stand. Following the rule laid down in *Com. v. Keeper of Prison*, 2 Ashm., 227, in which it was said that the rule was a safe one, "where a malicious homicide is charged to refuse bail in all cases, where a judge would sustain capital conviction if pronounced on such evidence of guilt as was exhibited to him on the hearing of the application to admit to bail."

A MAN WITH AN ANCESTRY.—The claim of a Hebrew gentleman to be exempted from serving on a coroner's jury on the ground of his being a descendant of Aaron, the high priest, and forbidden in that character to approach a dead body, seems a strange one to advance, and so many years have passed since Aaron's death that the fact of being directly descended from him must in the present day be difficult to establish. In England it is considered a great thing to be able to trace back to a man who "came over with the Conqueror." In France a nobleman is more than satisfied if he can prove that any one of his forefathers took part in the crusades. What, however, in point of antiquity, is the first crusade? What is the invasion of England by the Normans compared with such an event as the escape of the Israelites from Egypt and the giving out of the law in the wilderness?—for these, and especially the latter, are the historic performances with which the ancestors of Mr. Lewis David Cohen, the gentleman who refuses to "enter unto a corpse," is associated. Mr. Cohen had been five times fined when he at last appealed to the magistrate at quarter sessions, who, after hearing his evidence and receiving the written testimony of the rabbi as to the Aaronic descent, has ordered the remission of the fines.

## Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

ABRAHAM H. HERR

vs.

JOHN A. BARBOUR ET AL.

EQUITY. No. 7,227.

{ Decided October 29, 1883.

{ The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

1. Where a decree is made against several defendants for the payment of a sum of money, a payment of the amount by either of them works a satisfaction of the decree, because all the defendants are principals and the duty to pay the whole sum devolves upon each of them. Therefore, after a decree is thus satisfied, an execution can no longer issue under it against the other defendants for the purpose of enforcing contributions from them.
2. The Maryland act of 1763, chap. 23, sec 8, providing that where a judgment has been recovered against the principal debtors and sureties and the judgment has been satisfied by one surety, the creditor shall be compelled to assign the judgment to him, is in force in this District, but it applies only to cases where payment is made by a surety on judgments, and not to decrees.
3. Contribution, at law, cannot be enforced by one *tort-feasor* against his co-wrong doers, where the transaction out of which the judgment arises involves moral turpitude. So, when the controversy, upon which a decree is rendered, is a breach of trust on the part of all the defendants, in defrauding their common principal, each defendant stands in the position of a joint *tort-feasor*, and one of them, after having paid the amount of the decree, cannot have an execution upon it against his co-defendants, for the purpose of enforcing contributions from them.
4. Where, after a decree is rendered against joint *tort feasors*, one of the defendants conveys his land and, subsequently, another of the defendants satisfies the decree by payment, the land so conveyed is at once discharged from the liability which attached to it while the decree remained unsatisfied.
5. Precedents and principles should not be departed from in order to meet what may be thought to be the abstract justice of a particular case.

### STATEMENT OF THE CASE.

The bill in this cause was filed in April, 1880. It alleges that in December, 1873, Samuel Strong had filed a bill in this court against John A. Barbour and a certain Dodge and Darneille, for a discovery and account, and to recover a sum of money which the plaintiff alleged was due to him by the defendants as his fiduciary agents, and of which he had been defrauded by their practices. In February, 1876, a decree was passed ordering that the defendants should pay to the complainant the sum of \$2,115.92, with costs. After the de-

cree, viz., in March, 1876, Dodge & Darneille conveyed certain real estate, which is the subject of controversy in this suit, to the complainant Herr. An appeal was taken from the decree to the Supreme Court of the United States, but was dismissed. After the entry of the mandate of that court in June, 1879, an execution was issued upon the decree, and by direction of the solicitor of Strong, it was levied upon real estate, belonging to John A. Barbour. In September, 1879, Barbour paid one thousand dollars on the decree to Totten, for whose use it had been entered. In January, 1880, the marshal was ordered to sell the property of Barbour under the execution, to raise the balance of the money. On the 9th of February, 1880, the execution, by the direction of Strong's solicitor, was returned "released," and an *alias* execution was ordered upon the decree which, by direction of Strong's solicitor, was levied by the marshal upon the property so as aforesaid conveyed by Dodge & Darneille to the complainant Herr. On the next day, February 10th, the balance under the decree was paid by John A. Barbour to Totten, amounting, with interest and costs, to \$1,780.18. A receipt was given to Barbour for that sum and the decree was entered, by Totten's order, for the use of Margaret C. Barbour, the complainant, and an order was then given by Mrs. Barbour's solicitor to sell the land so conveyed to the complainant, under the execution. Thereupon this bill was filed, charging, among other things, that the decree had been entered to the use of the said Margaret C. Barbour by the procurement and contrivance of said John A. Barbour, and for his benefit and behoof after its satisfaction and extinguishment in order to compel the complainant by force of the execution to contribute in favor of the said John A. Barbour towards the payment of the decree, notwithstanding it had been already extinguished by satisfaction made by the said Barbour to Totten. It prayed that the execution and levy upon the complainant's property should be vacated and set aside, and the property decreed to stand free and exempt from all process or claim on the part of John A. Barbour or Margaret C. Barbour. In the bill the oaths of the defendants to their answers were expressly waived.

Mrs. Barbour, alone of the defendants, answered the bill, and her answer was not sworn to. She insisted that the assignment of the decree to her and its entry on the docket to her use, were all made by her authority and with her consent. She denied specifically that John A. Barbour had induced Totten to have the suit against Strong en-



tered to her use, but, on the contrary, stated that the inducement proceeded entirely from her, and that the money was paid by her to Totten as the consideration for the transfer to her of the decree; and she claimed that, as a purchaser for value, she was entitled to all the rights under it to which the complainant Strong was entitled; and denied that the decree had been entered satisfied or was extinguished. Issue was joined to this answer, and the testimony of Mrs. Barbour and of Mr. Totten, both of whom were called by the complainant, is the only evidence taken in the case.

The court below, at special term, passed a decree vacating and setting aside the execution and levy upon the property conveyed to Herr, and declared that the property should be exempt and free from further claim in the premises, and this appeal was taken by Mrs. Barbour from that decree.

Mr. Justice HAGNER, after making the foregoing statement of the case, delivered the opinion of the court.

The evidence of Mrs. Barbour is undoubtedly greatly in conflict with the averments in her answer. It appears, as undisputed in the case, that the first thousand dollars which were paid by John A. Barbour, on the decree, in September, 1879, was borrowed by him from his mother, and that he executed a deed of trust upon other property, belonging to him, to secure to his mother its repayment. As to that payment, therefore, there can be no question that it was made with the proper money of John A. Barbour.

It is further proved by Mrs. Barbour, that the remaining sum of \$1,780 was also obtained from her by John A. Barbour. She testifies that for that sum she had no security from her son, and that she did not expect any when it was given to him; that it had not been advanced in the nature of a loan; that it had not been furnished upon any understanding, expressed or implied, that it should be appropriated, in whole or in part, to the purchase of the decree; that she "gave him the money to do as he pleased with it;" that she "gave him the money as a present to do as he pleased;" that she "had been giving him money all her life, at least ever since the death of his father;" that "there was no agreement between them for its repayment;" that she did not request or require him to devote any portion of it to any specific purpose;" that she had "nothing, personally, to do with any of the steps which resulted in the assignment of the decree to herself;" "I did not," she says, "request it at all," my son

gave it to me without any request, I did not ask him for it." She also stated that it was her son who employed counsel to procure an assignment of the decree, and that she received from the hands of her son the contract, which she signed with her solicitors, who had been the solicitors of her son in the previous history of the case.

The first question for our consideration is: Was the decree satisfied by its payment, in full, to Totten, the assignee of Strong?

The general principle is well settled that the payment of an incumbrance by one whose duty it is to pay it extinguishes it. So, payment made by one of several joint obligors works the satisfaction of a bond. *Bowie v. Carroll*, 7 Gill, 34.

A judgment, upon its payment by one of the defendants, becomes *functus officio*. It perishes in fruition.

In this decree all the defendants were principals, and the duty to pay the whole of the judgment devolved upon each, and a payment by either worked a satisfaction of the decree.

In 4 Jones, North Carolina Equity Reps., 407, is to be found the case of *Hinton v. Odenheimer*. There a creditor brought suit against two persons constituting a partnership. They gave bail for their appearance, according to the law as it then stood, and one of them afterwards left the State, and judgment was entered against both partners. The resident partner paid the debt, and had the judgment entered to his use. He then procured a judgment against the surety on the bail bond of his absconding partner, and issued an execution upon it. The surety filed a bill in equity to restrain the enforcement of the execution, and the court granted the injunction. On appeal, the appellate court said: "There is no principle on which, after satisfaction of the judgment on the partnership debt by one of the partners sued, equity ought to extend or preserve the vitality of the legal security, under the guise of an assignment, so as to charge the bail of the other partner. The contract of the defendant is with the creditor alone. After he is paid, he has no further interest in the matter."

A statute of Maryland of 1763, chap. 23, sec. 8, which is in force in this District, provides: "That where a judgment has been recovered against the principal debtors and sureties, and the judgment has been satisfied by one surety, the creditor shall be compelled to assign the judgment to that surety, and such assignee shall be entitled unto and have in his own name the same execution against the principal debtors, by virtue of such assignment, as the creditor might have had."



This statute made a change in what was the common law of the subject before its passage, but it is to be remarked that it applies only to the cases where the payment is made by a surety and on judgments, not decrees.

And it has also been decided in *Croger v. Bengle*, 5 Har. & John., 234, that if the payment is made by the surety, in such case, to an assignee of the judgment, such assignee has no authority to make a further assignment to the surety, since the act only contemplates payment by the surety to the original creditor, and an assignment by him.

2nd. The same rule will apply if an attempt is made after the payment of a decree by one of the defendants to enter it to a third party for the benefit of the surety.

Such should not be the case where the payment is made *bona fide* by a third person for whose use the judgment is entered; and if Mrs. Barbour had paid the \$1,780 herself, on her own account, and with the distinct purpose of having the decree, to that extent, entered for her use, such an assignment would have been valid. But we are satisfied, from an examination of the testimony in the case, in connection with all the facts, that this money, like the \$1,000 first paid, was really loaned, or given by Mrs. Barbour to her son to dispose of as he might see fit, as his own property, and without any existing purpose on her part to have it secured to her by an assignment of the decree for her use. The entry, therefore, of the decree to the use of Mrs. Barbour was, in our opinion, but an attempt on the part of John A. Barbour to do by indirection, under the cover of his mother's name, that which he could not have done without such interposition.

3d. If, however, Mrs. Barbour had, *bona fide* made the payment, her remedy would have been by a proceeding in equity against the other defendants since contribution from them could not be enforced upon the satisfied decree.

The payment in full of the decree, in the absence of any statute similar in its scope to the act of 1763, before referred to, works the extinguishment of the decree, and it was no longer available to be used for the purpose of contribution in favor of the person who discharged it.

4th. There is a further point made in the case, on the part of the complainant, arising out of the nature of the transaction which formed the basis of the decree in the case of *Strong v. Barbour*.

The matter in controversy in that case was an alleged breach of trust on the part of all the defendants who, therefore, must be re-

garded as standing in the position of joint *tortfeasors*.

It is well settled that there can be no contribution, at law, enforced by one *tortfeasor* against the other wrong-doers where the transaction, out of which the judgment arises, involves moral turpitude.

The general principle which denies the right of contribution between *tortfeasors* is discussed at length in the case of *Bailey v. Bussing*, 28 Conn., 455. In that case contribution was allowed where the defendants, though technically *tortfeasors*, were only such as the owners of a stage coach, which was upset by the carelessness of the driver. The absence of any fraud, or moral wrong, exempted the case from the operation of the general rule.

And in *Seltz v. Unna*, 6 Wallace, 336, it is said, "equal contribution to discharge a joint liability is not inequitable even as between wrong doers, although the law will not, in general, support an action to enforce it where the payments have been unequal."

It appears in the history of the present case, that John A. Barbour had filed a bill in equity, in July, 1879, against his co-defendants and Herr, Strong and Totten, for contribution, but the bill was dismissed after the defendants had answered or demurred. Whether such a bill could have been sustained if filed after entire payment, is a matter with which we are not concerned. The proceeding by Mrs. Barbour to enforce payment to her by execution upon the satisfied judgment, for the reasons we have stated, is untenable.

5. It was insisted upon the part of the defendants, in the argument, that Herr purchased from Dodge & Darneille with full knowledge of the existence of Strong's decree, and of the nature of the transaction creating that liability, and that, as Dodge & Darneille could not be heard in a court of equity on an application to exonerate their property from contribution to John A. Barbour, neither could Herr be considered as standing in a better position than his grantors, or having any equity superior to theirs, and as Herr, therefore, does not come into court with clean hands, he could obtain no relief here.

It is true that Herr must be considered as having purchased with perfect knowledge of Strong's decree, but it does not follow that that fact places him, to all intents, in the identical position of his grantors. As to the land he purchased he is, of course, in no better attitude, and whatever liabilities justly attached to that land at the time of his purchase remain chargeable against it now. And in the same way, whatever immunities can be con-

sidered as appertaining to it at the time still equally surround it in Herr's possession.

John A. Barbour, as one of the joint *tortfeasors* and defendants under the decree, could not have enforced contribution under the decree out of the lands of Dodge & Darneille while in their possession, neither can he enforce it now when the land has passed into the possession of Herr.

A proprietor of land may have incurred certain liabilities by his acts as proprietor of that land, as, for example, by digging coal or minerals upon it in such wise as to endanger the safety of his neighbor's property. The purchaser of the land, however, would not be held liable for these antecedent acts of his vendor, although any judgment upon the land would remain binding in the hands of the purchaser.

So, where, as in a reported case, two fathers agreed to make advances to their children upon a treaty of marriage between them, one promising to convey a particular farm to the married couple, and the other to advance a sum of money to stock it. After the marriage, the latter paid the money according to his agreement, but the former refused to convey the farm, and sold it to a third person. That purchaser could not be held liable for this contract, although, if the land had remained in the hands of the father, the court might have decreed specifically that it should be conveyed according to the agreement.

Whatever liability was fixed and binding upon the land of Dodge & Darneille, when it was purchased by Herr, remained a charge upon it after Herr's purchase, but nothing more.

Much stress has been laid upon the alleged hardship of this case. It is but proper that courts should, at times, recall the response which their predecessors have made when this argument has been much pressed upon them as a reason for departing from fixed principles. This is well expressed in the case of *Boyd v. Parker*, 43 Md., 201: "The consideration of the hardship of the particular case sometimes leads the court to depart from precedents and make shipwrecks of legal principles. To these it is our duty to adhere, and we have no right to depart from them to meet what we may think is the abstract justice of any particular case."

"Who built the bridge," asked a friend of Hook.

"I don't know," said Hook, "but if you go over you'll be tolled."

## United States Supreme Court.

No. 86.—OCTOBER TERM, 1883.

WILLIAM BAILEY IN HIS OWN RIGHT, SARAH Leetham, Executrix, and Henry Cooper Gleadow, Executor of the last will and testament of William Leetham, deceased, and William Bailey as Assignee, and the said Sarah Leetham and Henry Cooper Gleadow, as such Executrix and Executor of the said William Leetham, Assignee of the said William Leetham and of James Leetham, Executors, and Elizabeth Leetham, Executrix, of the last will and testament of John Leetham, deceased, Appellants,

vs.

THE UNITED STATES.

*Appeal from the Court of Claims.*

Payment to an attorney in fact, constituted such by power of attorney executed by the claimants before the allowance of their claim by Congress or by the proper department, is good as between the Government and such claimants, where the power of attorney has not been revoked at the time payment is made, notwithstanding the provisions of the act of July 29, 1846, entitled "An act in relation to the payment of claims," and the act of February 26, 1853, entitled "An act to prevent frauds upon the Treasury of the United States." (9 Stat. 41 and 10 Ib., 170.)

Mr. Justice HARLAN delivered the opinion of the court.

By a decree passed March 25th, 1868, in the District Court of the United States for the Southern District of New York, certain sums of money were ascertained to be due on account of the illegal capture of the British steamer *Labuan* and her cargo by a cruiser of the United States.

On the 6th day of February, 1869, William Bailey, William Leetham, James Leetham and Elizabeth Leetham, British subjects, executed and delivered a power of attorney—in which they described themselves as then or late owners of said steamer—constituting one A. E. Godeffroy, of New York, their attorney, with authority to receive from the government of the United States, and from all and every person or persons whom it might concern to pay or satisfy the same, all moneys then or which might thereafter become due and payable to them with reference to said vessel *Labuan*; upon receipt thereof, to execute acquittances, releases and discharges for the same; and, upon non-payment thereof, to collect said moneys by such necessary actions, suits, or expedients as their attorney deemed proper.

By an act of Congress, approved July 7, 1870, it was, among other things, provided

"that there be paid, out of any money in the Treasury not otherwise appropriated, to William Bailey, William Leetham, and John Leetham, of England, or their legal representatives, owners of the British steamer Labuan, \$131,221.30, with interest from June 2, 1862, to the time of payment, and five thousand dollars without interest." The act declares that such sums are due under the before-mentioned decree of March 25, 1868.

At the date of this act the owners, in different proportions, of the Labuan, were William Bailey, William Leetham, and the executors and executrix of John Leetham, who were William Leetham, James Leetham and Elizabeth Leetham.

An account between the United States and said owners, based upon the said act of July 7, 1870, having been examined, adjusted, admitted and certified by the proper officers of the Treasury, a warrant was made, upon which a draft was issued on the Treasurer of the United States for the sum of \$200,070.34, payable "to Wm. Bailey, Wm. Leetham and John Leetham, of England, or their legal representatives, or order." This draft was delivered to Godeffroy, with this endorsement thereon: "Pay on the endorsement of A. E. Godeffroy, atty. in fact. R. W. Taylor, comptroller." The draft having been endorsed in the names of the payees, by himself as their attorney in fact, Godeffroy received the proceeds, but has never paid to the parties named in the act of Congress, or to any one for them, any part of the sum collected by him from the United States.

The Treasury Department refused, although requested by appellants or their agents, to make further payment. Thereupon this action was brought in the Court of Claims to recover the amount specified in the act of Congress. Judgment was rendered for the United States, and the present appeal questions the correctness of that judgment.

It is contended, on behalf of appellants, that the power of attorney executed in 1869 to Godeffroy—upon the authority of which alone was payment made to him—was, under the laws of the United States, absolutely null and void; consequently, no payment under it could bind the claimants or discharge the Government from its obligation to pay the sums specified in the act of 1870. This presents the controlling question on the present appeal. Its determination depends upon the construction to be given to the act of July 29th, 1846, (9 Stat., 41), entitled "An act in relation to the payment of claims," and to the first and seventh sections of the act of February 26, 1853, (10 Stat., 170), entitled

"An act to prevent frauds upon the Treasury of the United States."

The act of 1846, related to claims against the United States allowed by a resolution or act of Congress. That statute directed that they should not be paid to any other person than the claimant, his executor or administrator, unless upon the production to the proper disbursing officer of a warrant of attorney executed "after the enactment of the resolution or act allowing the claim." The first section of the act of 1853 declares that "all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest thereon, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, or orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof." That act further provides (§ 7) that its provisions, and those of the act of 1846, shall "apply and extend to all claims against the United States, whether allowed by special acts of Congress, or arising under general laws or treaties, or in any other manner whatever."

These enactments have been under examination in several cases heretofore decided in this court, some of which are now relied on to support the proposition that officers of the Treasury were forbidden, by statute, from recognizing Godeffroy, under any circumstances, as agent of claimants, with authority, as between them and the Government, to receive the warrant and draft when issued. But we do not understand that any of these cases involved the precise question now presented for determination.

In *U. S. v. Gilliss*, 95 U. S., 414, it was ruled that a claim against the United States could not be assigned so as to enable the assignee to bring suit against the Government in his own name in the Court of Claims. In *Spofford v. Kirk*, 97 U. S., 484, the question was as to the validity of certain orders drawn by a claimant, before the allowance of his claim upon the attorneys having it in charge, directing the latter to pay certain sums out of the proceeds when collected, and which orders, being accepted by the attorneys, were purchased by Spofford in good faith and for value. Upon the treasury warrant being issued, the claimant refused to admit the validity either of the orders he had given or the

acceptances made by his attorneys. Thereupon Spofford sought, by suit against the claimant and his attorneys, to enforce a compliance with the orders and acceptances of which he had become assignee and holder. The court adjudged that the transfer or assignment to Spofford was, under the act of 1853—carried into the Revised Statutes, § 3,477—a nullity as between him and the claimant. No question arose in that case as to what would have been the effect upon the rights of the claimant had the officers of the Government recognized the assignment to Spofford. In *Erwin v. United States*, 97 U. S., 392, it was ruled that the act of 1853 applied to cases of voluntary assignments of demands against the government, and did not embrace cases where the title is transferred by operation of law. "The passing of claims to heirs, devisees or assignees in bankruptcy," said the court, "are not within the evil at which the statute aimed."

But what was said in *Goodman v. Niblack*, 102 U. S., 559, seems to be more directly in point. That was the case of a voluntary assignment by a debtor of his property for the benefit of creditors, including his rights, credits, effects and estate of every description. The assignment embraced a claim of the assignor arising under a contract with the United States. It was adjudged in the court of original jurisdiction that, as to that claim, the assignment was rendered invalid by the act of 1853. But the language of this court, speaking by Mr. Justice Miller, was: "It is understood that the circuit court sustained the demurrer under the pressure of the strong language of the opinion in *Spofford v. Kirk*. We do not think, however, that the circumstances of the present case bring it within the one then under consideration, or the principles there laid down. That was a case of the transfer or assignment of a part of a disputed claim, then in controversy, and it was clearly within all the mischiefs designed to be remedied by the statute. Those mischiefs, as laid down in that opinion, and in the others referred to, are mainly two: 1. The danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction; 2. That by a transfer of such a claim against the Government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts, or the Congress, as desperate cases, where the reward is contingent on success, so often sug-

gest." "But these considerations," the court proceeded to say, "as well as a careful examination of the statute, leave no doubt that its sole purpose was to protect the Government and not the parties to the assignment."

These cases show that the statutes in question are not to be interpreted according to the literal acceptation of the words used. They show that there may be assignments or transfers of claims against the Government which are not forbidden.

In the case before us no question rises as to the transfer or assignment of a claim against the Government. The question is whether payment to one, who has been authorized to receive it, by the power of attorney executed before the allowance of the claim by the act of Congress, was good as between the Government and the claimant, where, at the time of payment, such power of attorney was unrevoked. If, in respect of transfers or assignments of claims, the purpose of the statute, as ruled in *Goodwin v. Niblack*, was to protect the Government, not the claimant in his dealings with the Government, it is difficult to perceive upon what ground it could be held that the statutory inhibition upon powers of attorney in advance of the allowance of the claim and the issuing of the warrant, can be used to compel a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it. A mere power of attorney given before the warrant is issued—so long, at least, as it is unexecuted—may undoubtedly be treated by the claimant as absolutely null and void in any contest between him and his attorney in fact. And it may be so regarded by the officers of the Government whose duty it is to adjust the claim and issue a warrant for its amount. But if those officers chose to make payment to the person whom the claimant, by formal power of attorney, has accredited to them, as authorized to receive payment, the claimant cannot be permitted to make his own disregard of the statute the basis for impeaching the settlement had with his agent. To hold otherwise would be inconsistent with the ruling heretofore made—and with which, upon consideration, we are entirely satisfied—that the purpose of Congress, by the enactments in question was to protect the Government against frauds upon the part of claimants and those who might become interested with them in the prosecution of claims, whether before Congress or the several departments. The title of the act of 1853 suggests this purpose. It is to prevent frauds upon the Treasury. An effectual means to that end was to authorize the of-

ficers of the Government to disregard any assignment or transfer of a claim, or any power of attorney to collect it, unless made or executed after the allowance of the claim, the ascertainment of the amount due thereon, and the issuing of the warrant for the payment thereof. Other sections of the statute—those forbidding officers of the Government and members of Congress from prosecuting or becoming interested in claims against the Government, and those punishing the bribery or undue influencing of such officers or members—sustain the view that what was in the mind of Congress was to protect the Government in the matter of claims against it. But if the protection of claimants was at all in the mind of Congress when passing the acts of 1846 and 1853, it is quite certain that the courts should not, to the injury of the Government, extend that protection to those who elected not to avail themselves of the provisions of those statutes. Here it is not denied that the power of attorney executed in 1869 embraces, and was intended to embrace, the claims arising out of the decree of 1868, from whatever source the money in satisfaction of it might be derived. Nor is it pretended that such power of attorney had been revoked prior to the adjustment and payment of the claims in question.

It seems to us—looking at the mischiefs intended to be remedied by these statutes, and giving the words of Congress a reasonable interpretation—that the officers of the Treasury were at liberty as between the Government and the claimants to recognize the unrevoked authority which the latter had given to Godeffroy, without restriction as to time, to receive from any one whom it might concern to pay all sums of money due or to become due and payable on account of the seizure of the vessel *Labuan*.

The judgment must, therefore, be affirmed.

A novel ejectment suit, not yet reported, is mentioned in some of the English papers, where the defendants, under an agreement with a mortgagee, put up on the wall of a house a "boarding" for a great street advertisement, and the owner of the house brought ejectment to recover possession of the part of the wall thus occupied, and for mesne profits. It was objected on behalf of the defendants that the action would not lie, as they had only an easement or license, but the Judge considered that they had actual possession, and directed a verdict for possession and a considerable sum as rents and profits.

#### Orphans' Court Alleghany County, Penn.

IN RE ESTATE OF HENRY MEYER, Deceased.

Where it appears from the by-laws of a beneficial association that its object was to perpetuate a fund for the relief of the widows and orphans of its members, the words heirs and legal representatives, as used in its by-laws and the certificate of issuance issued by it, are construed to mean children.

The Odd Fellows' Endowment Association issued a certificate of life insurance to J., which provided that the amount which would become due thereon at his death should be paid to his wife, E., or her legal representatives. She having died prior to her husband, leaving two children to survive her, and he having remarried and left his second wife to survive him: *Held*, That the children were entitled to the fund.

The accountant was also administrator of the estate of the deceased wife of the decedent, who was designated as the beneficiary in a certificate issued by the Odd Fellows' Endowment Association. He receipted to the association for the amount which became due thereon as administrator of both estates, but claimed to have received it as administrator of her estate. The decedent remarried and left his second wife to survive him. The accountant not having charged himself with the amount received on this certificate, she filed exceptions to his account, claiming that he should be charged with it for the purpose of distributing it to her as widow of the decedent.

Opinion by OVER, J., Filed November 14, 1883.

The certificate of membership issued by the Odd Fellows' Endowment Association to John Henry Meyer, the decedent, provided for the payment of the amount which would become due thereon to Ernestina Emma Meyer, his wife, or her legal representatives, and *prima facie*, the accountant as his administrator had no right to receive it. It appears from the first article of the by-laws of the association that its object is "the creation and perpetuation of a fund for the relief of the widows and orphans of its members." And the exceptant contends that she represents the class to be primarily benefited, and should be substituted for the beneficiary named in the certificate, and is therefore entitled to the fund, and that the accountant should be charged with it for the purpose of distribution to her. The eighth article of the by-laws provides that upon the decease of a member entitled to benefits, the secretary shall forward to the person named in the certificate of membership issued to the deceased, or legal heirs, the amount due by reason of said death. In *Hodge's Appeal*, 8 W. N. C., 209, the words heirs and legal representatives used in the by-laws of a beneficial association, to designate the benefi-

aries, are construed to mean next of kin as ascertained by the intestate laws, and if they be so construed here it is clear that the next of kin of the deceased, Mrs. Meyer, are entitled to this fund. But if it be so distributed as the decedent survived her and was of her next of kin, under the authority of Anderson's Appeal, 85 Pa. St., 202, his administrator would take an equal share with their children, contrary to the object and purpose of the association. Such construction, however, should be given to these words, if possible, as would promote its purpose. And as the object was to provide for the relief of orphans of members as well as widows, it can only be done by construing them to mean children. It seems clear, then, having in view the designs of the association, they should be so construed. If this conclusion be correct, the certificate then provides for payment, first, to the wife of the decedent named in it, and in the event of her death, then to her children. He had two children by his first wife, who survive him, and none by his second. They are the persons designated in the alternative or second class, who are to be benefited in the event of the death of the person designated in the first. It seems reasonable that substitution of persons not designated in the certificate could only be made upon failure of designated persons representing both classes. And, therefore, the exceptant, although the widow, cannot be substituted as beneficiary instead of the deceased, Mrs. Meyer, and her children as the alternative beneficiaries are entitled to the fund. It appears also to have been the intention of the decedent that they should receive it as had he not so intended, he no doubt would have surrendered the certificate and had a new one issued designating the exceptant as the beneficiary.—*Pittsburgh Legal Journal*.

#### London Times on the U. S. Supreme Court.

The London *Times* recently contained a letter entitled "American Law and Lawyers." The substance of it, with some comments is given in *Gibson's Law Notes*, as follows: "First of all then it appears that in most of the States there is a long vacation, not so long as ours, but long enough; the court of Washington especially is remarkable for the brevity of its session, and it seems that it takes from three to four years to get a decision from that court. It has a list for the coming term of 960 causes—i. e., three times the number it disposes of in the whole year. The judges, it seems, are elected only for short terms, and are elected by the vote of the people. This indeed appears astounding to an Englishman;

but it seems that although the choice does not always fall on the right man, still on the whole the system works better than might be expected. Special pleading in some States still flourishes, and many other old legal-world ways that we have lost long since. In Washington and Baltimore it appears that a Court of Orphans still exists. This court is mentioned by Coke, but has ceased to be in active use for many years with us. The correspondent's account of a typical trial in one of the States is indeed strange reading to us. The judge is in the first place not of such importance as in England, his rulings are accepted, but not 'with obsequious eagerness.' He takes no notes, rarely interferes in the examination of a witness, reads the papers ostentatiously, open his letters in court, and—but let us pause to prepare our readers' mind—'walks out of court while the advocates are arguing, walks in again to see what is going on, and not being interested, disappears again.' An English lawyer must feel blank surprise; what would be thought of a judge here who walked in and out during a trial; however, it appears that these perambulating judges give very satisfactory decisions, and that they are 'patient, painstaking and courteous to the bar' to a degree. Another remarkable trait in American judges appears to be their reticence, contrasted as it is by the Americans with what they are pleased to style 'the garrulousness of the English bench.' Well, after all, we would not change benches with the States. Englishmen have at least one thing to be proud of—the integrity and impartiality of the bench, never yet questioned even by the lightest breath of scandal."

Of this the *Albany Law Journal* says:

"There is some news in this for American readers. We hardly think it is true that the United States Supreme Court is 'remarkable for the brevity of its sessions,' for it sits six or seven months without intermission, and does a vast amount of work in the vacation. As to the tenure of the judges: in many States the judges are appointed and hold for life or until seventy; this is true of the Federal judges also. In our own State, where the judges are elected, they hold for fourteen years, which can hardly be called a short term. 'Special pleading flourishes' in very few States, and it is amusing to note the English assumption that we owe legal reform in any manner to England. We taught the English all they know or have of practical legal reform. It was this State that had the boldness and sense of justice to set the example which England and many States have fol-

lowed. As to the judge who 'walks out of court while the advocates are arguing,' etc., we must be permitted to doubt. These English see strange things when they are in this country—things that Americans never have seen. The English do well to admire their own bench, but we find abundant evidence in the criticisms of their legal journals that they do not consider it faultless."

#### Postal Rates Ninety Years Ago.

Now that the two-cent postage law has gone into effect, the following provisions of the first law of Congress on the subject will be read with interest:

Feb. 20, 1792, was the date of the first act fixing rates of postage on domestic letters, and established the following rates, to take effect June 1, 1792:

Act Feb. 20, 1792, section 9, by land—For every single letter not exceeding 30 miles, 6 cents,

For every single letter over 30 miles and not exceeding 60 miles, 8 cents.

For every single letter over 60 miles and not exceeding 100 miles, 10 cents.

For every single letter over 100 miles and not exceeding 150 miles, 12 cents.

For every letter over 150 miles and not exceeding 200 miles, 15 cents.

For every single letter over 200 miles and not exceeding 250 miles, 17 cents.

For every single letter over 250 miles and not exceeding 350 miles, 20 cents.

For every single letter over 350 miles and not exceeding 450 miles, 22 cents.

For every single letter over 450 miles, 25 cents.

For every double letter, double the said rates.

For every triple letter, triple the said rates.

For every packet weighing one ounce avoirdupois, to pay at the rate of four single letters for each ounce, and in that proportion for any greater weight.

**SLAVE MARRIAGES.**—Our supreme court, this week, in the cases of *Morris v. Williams*, and *McDowell v. Sapp*, post, pp. 661, deal with the interesting and somewhat novel subject of slave marriages. It is not unlikely that, notwithstanding more than twenty years have elapsed since such a marriage was contracted, questions of legitimacy and inheritance, growing out of these marriages, will, for a long time, continue to arise.

The court do not, in the case of *Morris v. Williams*, find it necessary to pass upon the validity of the slave marriage there under consideration, but permit the issue to inherit

by force of our statute, that the issue of marriages, void in law, shall nevertheless be considered legitimate.

But in the case of *McDowell v. Sapp*, it is held that a slave marriage was one of imperfect obligation, and, before the emancipation proclamation, was effectually avoided by the marriage of either party with another person.—*Ohio Law Journal*.

## The Courts.

### U. S. Supreme Court Proceedings.

DEC. 3, 1883.

The following persons were admitted to practice:

James S. Nickerson, of Philadelphia; Edward W. Laird and George A. Groot, of Cleveland.

No. 126. *J. A. Fay & Co., appellants, v. Cordesman Bros. et al.* Appeal from the circuit court of the United States for the southern district of Ohio. Decree affirmed with costs. Opinion by Mr. Justice Blatchford.

No. 103. *Moses Feibelman, administrator, &c., plaintiff in error, v. S. B. Packard, United States Marshal, et al.* In error to the circuit court of the United States for the district of Louisiana. Judgment affirmed with costs, and cause remanded to the circuit court of the United States for the eastern district of Louisiana. Opinion by Mr. Justice Matthews.

No. 127. *W. J. Smith et al., plaintiffs in error, v. Malcolm M. Neal et al.* In error to the circuit court of the United States for the western district of Tennessee. Judgment reversed with costs, and cause remanded for further proceedings in conformity with the opinion of this court. Opinion by Mr. Justice Woods.

No. 86. *William Bailey et al., appellants, v. the United States.* Appeal from the Court of Claims. Judgment affirmed. Opinion by Mr. Justice Harlan.

No. 671. *Relief Jackson, plaintiff in error, v. John D. Roby et al.; and*

No. 815. *John D. Roby et al., plaintiffs in error, v. Relief Jackson.* In error to the circuit court of the United States for the district of Colorado. Judgment affirmed, the plaintiffs in error to pay the costs of their respective writs in this court. Opinion by Mr. Justice Field.

No. 17. *George A. Cunningham, appellant, v. the Macon & Brunswick Railroad Co. et al.* Appeal from the circuit court of the United States for the southern district of Georgia. Decree affirmed with costs. Opinion by Mr. Justice Miller.

No. 105. *John F. Phillips, plaintiff in error, v. the Southern Pacific Railroad Co.* In error from the circuit court of the United States for the district of California. Judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 106. *James H. Cox, plaintiff in error, v. the Southern Pacific Railroad Co.* In error from the circuit court of the United States for the district of California. Judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 1117. *Alfred White et al., appellants, v. Belle F. Page.* Appeal from the circuit court of the United States for the northern district of

Illinois. Appeal, so far as the same relates to Alfred White, dismissed for the want of jurisdiction. Opinion by Mr. Chief Justice Waite.

No. 587. Alfred Slidell et al., appellants, v. George H. Grandjean, U. S. Deputy Surveyor; and

No. 588. Alfred Slidell et al., appellants, v. James G. Richardson, register, &c. Motion to advance granted, and cases assigned for argument on first day of session in January next, after cases heretofore assigned.

No. 135. Frederick P. Dimpfel et al., appellants, v. Ohio & Mississippi Railroad Co. et al. Argument concluded.

No. 891. Frederick T. Frelinghuysen, Secretary of State, plaintiff in error, v. United States, ex rel. John J. Key; and

No. 995. The United States, ex rel. The La Abra Silver Mining Co., plaintiffs in error, v. Frederick T. Frelinghuysen, &c. Argument continued.

DEC. 4, 1883.

Matthew S. Taylor, of Leadville, Col., was admitted to practice.

No. 891. Frederick T. Frelinghuysen, &c., plaintiff in error, v. the United States, ex rel. John J. Key; and

No. 995. The United States, ex rel. the La Abra Silver Mining Co., plaintiff in error, v. Frederick T. Frelinghuysen, &c. Argument continued for the plaintiff in error in No. 891, and for the defendant in error in No. 995; for the defendant in error in No. 891, and concluded by Mr. F. P. Stanton for the plaintiff in error in No. 995.

No. 67. Mary R. Steever, appellant, v. John N. Rickman. Argument commenced.

DEC. 5, 1883.

The following persons were admitted to practice:

Lewis A. Croff, of Omaha, Neb.; Nathan S. Harwood and William H. Betts, of Washington, D. C.

No. 918. The Board of County Commissioners of Cherokee County, plaintiff in error, v. William C. Wilson.

No. 919. Salamanca Township, plaintiff in error, v. William C. Wilson. Submitted under twentieth rule.

No. 67. Mary R. Steever, appellant, v. James N. Rickman. Argument concluded.

No. 136. William E. Clements, appellant, v. the Odorless Excavating Apparatus Co. Argued.

No. 137. William J. Bryan et al., plaintiffs in error, v. Ferdinand J. Kennett et al. Continued per stipulation.

No. 138. Samuel G. B. Cook, appellant, v. San dusky Tool Company. Passed, etc.

No. 139. Stanhope Robertson et al., plaintiffs in error, v. Esau Pickrell et al. Argued.

DEC. 6, 1883.

The following persons were admitted to practice:

Michael Brown, of Big Rapids; Martin V. Montgomery, of Lansing; Andrew B. Allen, of Muskegon; Joseph H. Chandler, of Houghton, Mich.

No. 1024. The Winchester and Partridge Manufacturing Co., appellant, v. William W. Funge. Submitted under the twentieth rule.

No. 140. Harriet Skidmore et al., plaintiffs in error, v. the Pittsburg, Cincinnati & St. Louis Railway Co. Passed.

No. 141. The Chicago & Alton Railroad Company et al., appellants, v. the Union Rolling Mill

Co.; and

No. 172. The Massachusetts Mutual Life Insurance Co., appellant, v. the Union Rolling Mill Co. Argued.

Nos. 142 to 150 and 1130. The Cedar Rapids & Missouri River Railroad Co. et al., plaintiffs in error, v. Benjamin Herring, John T. Lake, Lewis Iddings, Daniel T. Cutler, Patrick Dundon, Elijah W. Brooks, David Greenstreet, Catharine M. Wooster, William T. Boyd and Hannah Jewell et al. Argument commenced.

DEC. 7, 1883.

No. 801. Alphonso L. Martin, sheriff, &c., et al., appellants, v. Albert S. Wqbb et al., trustees, &c. Submitted under the twentieth rule.

Nos. 142 to 150 and 1139. The Cedar Rapids & Missouri River Railroad Co. et al., plaintiff in error, v. Benjamin Herring, John T. Lake, Lewis Iddings, Daniel T. Cutler, Patrick Dundon, E. W. Brooks, David Greenstreet, Catharine M. Wooster, William T. Boyd, and Anderson Jewell et al., &c. Argument concluded.

No. 151. George I. Bright, plaintiff in error, v. Lucius Phipps. In error to the circuit court of the United States for the district of Louisiana. Dismissed with costs.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.

DEC. 3, 1883.

Hoffman v. Haight. Opinion by Mr. Justice Cox, sustaining demurrer to replication.

White v. Knox, Comptroller. Demurrer sustained and petition dismissed.

Morrow v. James. Argued and submitted.

DEC. 4, 1883.

Walter et al. v. Ward. Motion for costs set for hearing on Monday next.

Janin v. Gilmore. On hearing.

DEC. 5, 1883.

Janin v. Gilmore. Argued and submitted.

Morrison v. Rutherford. On hearing.

DEC. 6, 1883.

Morrison v. Rutherford. Bill dismissed without prejudice.

DEC. 7, 1883.

Johnson v. District of Columbia. Argued and submitted.

#### EQUITY COURT.—Justice Hagner

DEC. 4, 1883.

Shattuck v. Shattuck. Testimony ordered taken before Examiner James O. Clephane.

National Savings Bank v. Chapman. Order making Lucille Morrell party complainant.

Frazer v. Ray et al. Pro confesso as to certain defendants.

Shoemaker v. Shoemaker. Auditor's report confirmed and distribution ordered.

Steinacker v. Meinder. Sale ordered and Leon Tobriner appointed trustee to sell.

Richardson v. Clarke. J. S. Lang admitted as a party defendant.

Taylor v. Taylor. Testimony ordered taken before Examiner A. A. Brooks.

Heitmuller v. Olmstead. Sale ratified nisi.

DEC. 5, 1883.

Murray v. Fletcher. Leave to withdraw books of account.

Bucland v. District of Columbia et al. Pro confesso against A. G. Hall and John F. Cook ordered.



Mitchell v. Wise et al. Pro confesso against certain defendants ordered.

Luckett v. Luckett. Reference to auditor ordered.

Sonnemann v. Sonnemann.

Best v. Best. Reference to the auditor.

Pfaff v. Masonic Relief Association. Bill dismissed.

Reed v. Reed. Trustee's accounts approved.

Green v. Forsberg. Sale ratified nisi.

DEC. 6, 1883.

Sons and Daughters of Rachel v. Payne. Bill dismissed.

Smith v. Smith. Testimony of non-resident witnesses ordered taken.

Pitts v. Pitts. Pro confesso and testimony ordered taken before Examiner John F. Riley.

National Union Insurance Co. v. Tyler. Sale ordered and J. C. Heald appointed trustee to sell.

Riley v. Riley. Order appointing John Ridout guardian ad litem.

Ferguson v. Henderson. Substitution of trustee ordered.

Duvall v. Mitchell. Reference to auditor ordered.

Nickerson v. Nickerson. Leave granted to amend bill.

Hyde v. Fitzgerald. Pro confesso against Edward Fitzgerald ordered.

Reed v. Reed. Trustee permitted to sell notes.

Totten v. Bryant. Hearing suspended, and leave to take proof granted.

Bowman v. Bowman. Pro confesso, and proof ordered taken before Examiner E. D. F. Brady.

DEC. 7, 1883.

National Union Insurance Co. v. Tyler. Amendment of decree of December sixth granted.

Burdette v. Burdette. Decree fixing alimony and counsel fees.

Hilton v. Devlin. Motion to strike demurrer from files denied with costs.

Linn v. Jackson. Demurrer overruled.

Garrison v. Garrison. Demurrer sustained.

#### CIRCUIT COURT.—Justice Mac Arthur.

DEC. 3, 1883.

Hassett v. Baltimore & Ohio Railroad Co. Jury out.

DEC. 4, 1883.

Hassett v. Baltimore & Ohio Railroad Co. Jury failed to agree, and were discharged.

Butt v. Metropolitan Railroad Co. Plaintiff called and suit dismissed.

Shehan v. Green et al. Verdict for plaintiff for \$299.97, with interest from September 20, 1880.

Saunders v. Pfeil. Plaintiff called, and judgment for defendant for \$11 and costs.

Bennett v. Church et al. Referred to J. G. Payne.

DEC. 5, 1883.

Oudeshuys & Co. v. Doyle. Judgment by default.

Dixon & Brother v. Hunter. Judgment by default.

Johnson v. District of Columbia. Leave given to withdraw amended declaration. Juror withdrawn by plaintiff and leave given to the defendant to withdraw plea and file demurrer. Joinder filed. Demurrer sustained and appeal prayed.

Cole v. Potomac Steamboat Co. On trial.

DEC. 6, 1883.

Kimball & Co. v. Benton. Judgment by default. Connecticut General Life Insurance Co. v. Gannon. Same.

Hooc, Bro. & Co. v. Walch. Same.

McAvoy v. Blanchard. Death of defendant suggested, and process to heirs.

Neff v. Neale. Death of defendant suggested, and cause continued.

Berlin et al. v. Waggaman. Judgment below affirmed.

Cole v. Potomac Steamboat Co. Jury out.

DEC. 7, 1883.

Cole v. Potomac Steamboat Co. Verdict for plaintiff for \$500.

Costello v. Knight. On trial.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

Dec. 10, 1883.

24911. Frederick Henkle v. Belva A. Lockwood et al. Account, \$635. Pliffs atty L. P. Williamson.

24912. Josiah A. Bowman v. George W. Studds. Notes, \$419.60. Pliffs atty, W. Willoughby.

24913. William H. Dearmyer v. The Baltimore & Potomac R. R. Co. Damages, \$10,000. Pliffs attys, Carrington and Williamson.

24914. Lamkin & Foster v. Robert H. Hunter. Account, \$248.85. Pliffs atty, F. W. Jones. Defts atty, T. J. Miller.

24915. Frances M. Joyce et al. v. Keyser & Co. Account, \$1,071.13. Pliffs attys, Carusi & Miller.

DEC. 11, 1883.

24916. John Sale v. Robert B. Ferguson. Notes, \$1,220. Pliffs attys, Ross & Dean.

24917. John Glenn v. Isaac N. Winston. Account, \$4,500. Pliffs attys, Garnett & Robinson.

24918. Margaret McNamara v. Thos. Collins et al. Account, \$360. Pliffs attys, Mills and Hanley.

24919. Henry V. Merriman v. R. H. Hunter. Account and note, \$104.20 \$226.40. Pliffs attys, Ross & Dean.

24920 to 24962. John Glenn, trustee v. J. C. Marbury. Account, \$3,000; Grafton Tyler, \$300; R. T. Merrick, \$1,500; Christopher S. O'Hare, \$150; Beverly H. Robertson, \$3,000; Susan Saville et al., \$150; Alfred Schucking, \$300; James D. Clary, \$900; Charles M. Matthews, \$750; Fred. B. McGuire, \$1,500; Jos. G. Waters, \$300; Wm. B. Johns, \$300; Mabel Major, \$90; W. W. Burdette, \$300; John W. Burson, \$300; Elizabeth Busey, administratrix, \$600; William D. Cassin, \$1,000; Francis C. Cosby, \$750; Randolph Coyle, \$750; Richard L. Cropley, \$1,500; George W. Getty, \$3,000; Nath. Tyler, \$1,500; Hamilton G. Faat, \$5,400; Robert Dodge, \$3,000; M. W. Galt et al., \$3,000; Lewis J. Davis, \$1,500; John B. Davidson, \$1,500; Richard D. Cutts, \$300; Thos. Dowling, \$3,000; David Walker et al., \$3,000; Wm. R. Davis, \$2,550; Wm. A. Marks, \$1,200; Jas. L. Barbour, \$150; Laurence P. Graham, \$3,000; Granville F. Hyde, \$1,500; Agnes Houson, sr., \$300; John L. Hodge, \$3,000; Albert G. Hall, \$300; Gilbert Vanderwerken, \$1,500; Jane J. De La Roche, \$600; Brook B. Williams, \$3,000; James L. Davis, \$300; Robert Dodge, \$750. Pliffs attys, Garnett & Robinson.

24963. Ciro de Sazarra Verdi v. Yates & Simmons. Account, \$200. Pliffs atty, W. P. Bell.

DEC. 12, 1883.

24964. Goodman, Simon & Co. v. Louis Kaufman. Account, \$597.25. Pliffs attys, Ross & Dean.

24965. Edward C. Miller & Co. v. George McCarthy. Account, \$207. Pliffs atty, Fred. W. Jones.

24966. Aaron Baldwin et al. v. The Western Union Telegraph Co. Damages, \$5,000. Pliffs atty, E. A. Newman.

24967. Barbour & Hamilton v. George F. J. Colburn. Account, \$694.07. Pliffs attys, Hine & Thomas.

24968. Mary Peters v. Samuel Strong. Notes, \$7,000. Pliffs attys, Hine & Thomas.

24969. John Wunderlich v. Baltimore & Potomac R. R. Co. Damages, \$10,000. Pliffs attys, Elliot & Robinson.

24970. Mary D. Lear v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Pliffs attys, Elliot & Robinson.

24971. Lewis S. Cox & Co. v. Naal Gutman. Bill of exchange, \$351.98. Pliffs attys, Abert & Warner.

DEC. 13, 1883.

24972. John Shea v. Duncanson Bros. Appeal. Defts atty, H. W. Garnett.

24973. Bickford & Co. v. Fred. Freund. Account, \$54.54. Pliffs atty, John B. Lerner.

24974. John Devlin & Co. v. William Wolf et al. Note, \$100. Pliffs attys, Cook & Cole.  
24975. Same v. William Wolf. Account, \$415.74. Pliffs attys, same.

24976. Frank Hume v. George W. Perkins. Account, \$158.48. Pliffs attys, Drury & Norris.

DEC. 15, 1883.

24977. Henry Lightwardt v. John F. Chrismond. Account, \$115.25. Pliffs attys, Richards, Cook and Cole.

24978. Mary J. Smith, Executrix, v. The Baltimore & Potomac R. R. Co. Damages, \$5,000. Pliffs attys, Payne & Payne.

24979. Henry Coleman v. Frank Thompson. Damages, \$1,000. Pliffs atty, John E. McNally.

#### IN EQUITY.—New Suits.

DEC. 10, 1883.

8818. Charles W. Hoffman et al. v. Mary V. Obilton et al. To substitute trustees. Com. sol., G. E. Hamilton.

DEC. 11, 1883

8819. William R. Spelden et al. v. John N. Minnix et al. To sell. Com. sols, Edwards & Barnard.

8820. Robert P. Yost v. Joseph Weaver. To dissolve partnership and for account. Com. sol., H. H. Wells, jr. Defts sol., F. T. Browning.

8821. John Glenn et al. v. Mary S. Clymer et al. Com. sols., Garnett and Robinson.

8822. Same v. J. L. Hodge et al. Com. sols., same.

8823. Same v. Alice L. Nairn et al. Com. sols., same.

8824. Same v. George M. Sothoron et al. Com. sols., same.

8825. Same v. Mary H. Dorsey et al. Com. sols., same.

8826. Calvin A. Farnsworth v. Josie M. Farnsworth. For divorce. Com. sol., W. T. Johnson.

DEC. 12, 1883.

8827. George Hutchins et al. v. Elizabeth R. Hutchins et al. Partition. Com. sols., Willson and Elliot.

#### Legal Notices.

##### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of George Gerhardt, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1883.

49-3 JNO. E. McNALLY, Administrator c. t. a.

##### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Swift, late of St. Thomas, Danish West Indies, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of December, 1883.

49-3 JNO. ST. C. BROOKES, Administrator.

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia. Sitting in Equity, December 11th, 1883.

JOHN M. KEATING ET AL.

No. 8661. Eq. Dec. 23.

GEORGE McLAUGHLIN.

John F. Ennis, trustee, having reported that he sold lot numbered twenty-five (25), subdivision, in square numbered two hundred and six (206), with the improvements thereon, to Emma G. Nelson, for the sum of three thousand and four hundred and fifty (\$3,450) dollars, it is, this 11th day of December, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 20th day of January next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court.  
A true copy.

CHAS. P. JAMES, Justice, &c.  
Test: 50-3 R. J. MILES, Clerk.

#### Legal Notices.

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term.

IN RE THE ESTATE  
OF AMBROSE W. THOMPSON.

On hearing the petition of Celeste Thompson for Letters Testamentary upon the last Will and Testament of Ambrose W. Thompson, deceased, it is this 14th day of December, A. D. 1883, ordered, that the heirs-at-law of said deceased, and all other parties in interest, show cause, on or before the 14th day of January, 1884, why the prayer of said petition should not be granted.

It is further ordered, that a commission in the usual form issue to \_\_\_\_\_, of New York City, to take proof of said last Will and Testament according to law.

It is further ordered, that Richard W. Thompson and William K. Rogers, two of the executors named in said will, show cause, on or before the date above mentioned, why they do not qualify as executors aforesaid. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 50-3 H. J. RAMSDELL, Register of Wills.  
R. K. ELLIOT, Solicitor.

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ELIZABETH A. MOORE ET AL.

v. MARY E. HARRISON ET AL. } Equity. No. 6192.

James G. Payne and Edward H. Thomas, trustees, having reported that they have sold part of lot one (1) in square 453, at the corner of 6th and H streets, N. W., to James E. Bullock for \$5,125; part of the same lot in said square next to above described, twenty feet front, to Jacob Miller for \$6,025; part of same lot in same square, being twenty feet front, west of last described part, to Anna S. Barker for \$3,700; lot "D," square 408, to S. Jeanette Stevens and Anna S. Barker for \$17,400; part of lot 7 in square 447 to Christian Heurich, who has assigned the same to August Conrades for \$5,500; part of lot 6 in square 455 to Douglass Moore and Mary E. Harrison for \$13,300; part of lot 6 in square 378 to R. H. Goldsborough for \$12,000.

It is by the court, this 13th day of December, 1883, ordered, that the respective sales aforesaid be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of January, 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said last mentioned day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 50-3 R. J. MILES, Clerk.

##### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Napoleon Hudlin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

GEORGE C. BROWN, Administrator.  
H. R. ELLIOTT, Solicitor. 49-3

##### IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FREEDMANS SAVING'S & TRUST CO.

v. THOMAS BARTON ET AL. } Equity. No. 5,216.

Upon consideration of the report of James H. Smith, trustee of the sale of real estate described in the proceedings herein, it is this 10th day of December, A. D. 1883, ordered, that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 12th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 12th day of January, A. D. 1884.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. 50-3 Test: R. J. MILES, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas Swann, late of Washington, District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of December, 1883.

CHARLES SHIRLEY CARTER,  
JAMES LOWNDES, Executors.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Craig, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

HENRY C. CRAIG, Administrator.  
WM. D. CASSIN, Solicitor.

50-8

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jacob Hess, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1883.

SAM. S. BOND.  
S. R. BOND, Solicitor.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, Sarah T. Glover, of Fishkill, N. Y. and John P. Poe, of Baltimore, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Townsend Glover, late of Baltimore, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of December, 1883.

SARAH T. GLOVER,  
JOHN P. POE.  
T. A. LAMBERT, Solicitor.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Albert M. Perrotet, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

CHARLES C. DUNCANSON, Administrator c. t. a.  
J. M. YZNAGA, Solicitor.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Trawley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

JEREMIAH F. DOWNEY, Administrator.  
B. J. DARNELLE, Solicitor.

50-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John G. Stephenson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1883.

GEORGE P. ZURHORST, Administrator.  
A. K. BROWN, Solicitor.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Offutt, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of September, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1881.

MARY OFFUTT, Executrix.  
CHAS. M. MATTHEWS, Solicitor.

50-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the matter of the Estate of Mary E. Maroney. Application for Letters of Administration on the estate of Mary E. Maroney, late of the District of Columbia, has this day been made by John W. Ross.

All persons interested are hereby notified to appear in this Court on or before the 16th day of January next, at 10 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
ROSS & DEAN, Solicitors.

50-3

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the case of T. T. Lane & Michael Daly, Executors of William A. Lane, deceased, the Executors aforesaid has, with the approval of the Court, appointed Friday, the 18th day of January, A.D. 1884, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

60-3 Test: H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, on the 14th day of December, 1883.**

JOHN JOHNSON

v. ELIZA H. JOHNSON.

No. 8815. Eq. Doc. No. 23.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Eliza H. Johnson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.  
A true copy. Test: 50-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, on the 14th day of December, 1883.**

EMMA J. DAVIS

v. ELIAS DAVIS.

No. 8330. Equity Docket 23.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Elias Davis, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 50-3 R. J. MEIGS, Clerk.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ANTON HEITMULLER

In Equity. No. 7672.

JOHN F. OLMSTEAD ET AL.

George F. Appeby and William E. Edmonston, the trustees in the above entitled cause, having reported to the court that they have sold to James E. Miller, the south 22 feet 8 inches front of lot 4 in square 242, at and for the sum of \$2,726.14; and to the same purchaser the middle 22 feet 8 inches of said lot 4, at and for the sum of \$2,845.27; and to the same purchaser the north 22 feet 8 inches front of said lot 4, at and for the sum of \$2,826.40; and to Charles Heitmuller the north 22 feet 8 inches front of lot 6 in said square, at and for the sum of \$3,477.41; and to Anton Heitmuller the middle 22 feet 8 inches front of said lot 6, at and for the sum of \$3,364.23; the said lots 4 and 6 being of Heitmuller's recorded subdivision of said square:

It is this 4th day of December, 1883, ordered, that the said sales be confirmed, unless cause to the contrary be shown on or before the 4th day of January, 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 4th day of January, 1884.

By the Court.

CHAS. P. JAMES, Justice.

A true Copy.

Test:

R. J. MEIGS, Clerk.

**THIS IS TO GIVE NOTICE,**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah A. Kibbey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of November, 1883.

JOHN P. FRANKLIN, Executor.

CALDERON CARLISLE, Solicitor.

47-3

**THIS IS TO GIVE NOTICE,**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Samuel Stott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 23d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 23d day of November, 1883.

CHARLES J. STOTT.

SAMUEL G. STOTT.

Executors.

47-3

WM. B. WEBB, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business. November 23, 1883.**

In the case of Theodore Sheekels, Executor of Patrick F. McCarthy, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of December, A. D. 1883, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

47-3

H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

FANNY STEPHENS

Equity. No. 5677.

MARY A. PROCTOR ET AL.

Brainard H. Warner and Charles C. Glover, trustees, having reported that they have sold lot numbered four (4), in W. W. Corcoran's subdivision of original lots two (2) and three (3), in square numbered three hundred and thirty-seven (337), with the improvements thereon to Patrick R. Daly, for the sum of \$1,415: It is, this 24th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, A. D. 1884. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court.

A. B. HAGNER, Asso. Justice.

A true copy.

Test:

R. J. MEIGS, Clerk.

## Legal Notices.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William G. H. Newman, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of November, 1883.

MARY A. NEWMAN,

RAPHAEL C. GWYNN,

Executor.

CHAS. A. ELLIOTT, Solicitor.

46-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. November 27, 1883.**

In the matter of the estate of William Hicks, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Harriet Hicks.

All persons interested are hereby notified to appear in this court on Friday, the 21st day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

H. J. RAMSDELL, Register of Wills.

BENJ. J. DARNEILLE, Solicitor.

48-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Equity Business.**

CAROLINE A. DAVIS ET AL.

Equity. No. 5765.

DE VIN FINCKEL ET AL.

It is this 6th day of December, A. D. 1883, ordered by the Court, that the sale made on the 14th day of November, A. D. 1883, and reported by William H. Finckel, trustee in the above entitled cause, be, and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of January, A. D. 1884. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the city of Washington, D. C., once in each of three successive weeks previous to said day.

The report states the amount of sale to be \$1,560 cash.

By the Court.

CHAS. P. JAMES, Justice, &amp;c.

A true Copy.

Test:

49-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of December, 1883.**

JAMES F. DART

v.

CATHERINE DEVEREUX and

JOHN DEVEREUX.

No. 8517. Eq. Doc 23.

On motion of the plaintiff, by Mr. E. A. Newman, his solicitor, it is ordered that the defendant, John Devereux, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy.

Test:

49-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity, December 5, 1883.**

JULIA GREEN

v.

ANNIE C. FORSBERG ET AL.

\$300. Eq. Doc. 22.

Fillmore Beall, the trustee in this cause, having reported the sale of the real estate described in this cause, being parts of lots 16 and 17 in square 117, in Washington city, District of Columbia, under decree of this Court:

It is this 6th day of December, A. D. 1883, ordered, that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 5th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said 5th day of January, 1884.

The report states the amount of sales to be \$4,500.

By the Court.

CHAS. P. JAMES, Justice, &amp;c.

A true Copy.

Test:

49-3 R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of November, 1883.**

MARY ELIA EDWARDS } No. 8804. Eq. Doc. 23.  
v.  
EDGAR FRANCIS EDWARDS.

Upon hearing the original petition in this cause, the return of the Marshal on the summons, and the affidavit of Mrs. Mary Jones, as to the absence of the defendant from the District of Columbia, it is, by the court this 27th day of November, A. D. 1883, on motion of Elliot & Robinson, solicitors of petitioner, ordered that the defendant, Edgar Francis Edwards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said rule-day.

By the Court. A. B. HAGNER, Assoc. Justice.  
A true copy. Test: 48-3 R. J. Meigs, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.**

EMILY F. SCOTT } No. 8797. Equity Docket.  
v.  
FRANKLIN SCOTT.

On motion of the plaintiff, by Mr. James E. Clements, her solicitor, it is ordered that the defendant, Franklin Scott, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
True copy. Test: 47-3 R. J. Meigs, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.**

WILHELMINA RIESNER } No. 8785. Eq. Doc. 23.  
v.  
ANNA O'HARA ET AL.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Julia Eddy nee O'Hara, Susan O'Hara, Virginia O'Hara and George O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.**

WM. CLAUDE BARRETT } No. 8782. Eq. Doc. 23.  
v.  
MARY E. BROWN ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, Mary A. Bilyer, Sanford Bilyer, Oskaloosa F. Slater and John W. Slater and George T. Brown, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 48-3 R. J. Meigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of November, 1883.**

EMMETT C. ADAMS } No. 8785. Eq. Doc. 23.  
v.  
EPHRAIM S. STODDARD ET AL.

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendants, Ephraim S. Stoddard and Charles D. Sturtevant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. A. B. HAGNER, Justice.  
A true copy. Test: 47-3 R. J. Meigs, Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia.**

ROBERT PORTNER } No. 8,029. Equity.  
v.  
JOHN H. LEONARD.

Upon consideration of the report of James L. Davis, trustee in this cause, of the sale of part of lot six (6), in square twenty-nine (29), to William Casley, for \$1,060, it is, by the court this fifth day of November, A. D. 1883, ordered, that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of December, A. D. 1883. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 19th day of December, A. D. 1883.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 46-3 R. J. Meigs, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Adam Dade, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

her  
LOUISA M. DADE, Executrix.  
mark.

B. T. HANLEY, Solicitor. 49-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Violetta S. Sprigg, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

SAMUEL SPRIGG, Executor. 49-3

J. J. DARLINGTON, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Robert Payne, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

JACOB H. KENGLA, Administrator c. t. a.

JOSEPH FORRESTER, Solicitor. 49-3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles H. Hayden, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1883.

CHARLES W. HAYDEN, Administrator. 49-3

F. W. JONES, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Benjamin F. Neff, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1883.

FRANKLIN G. NEFF, Administrator. 49-3

P. B. STILSON, Solicitor.

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Martin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of November, 1883.

LUTHER MARTIN, Administrator. 47-3

EDWARDS & BARNARD, Solicitors.

# Washington Law Reporter

WASHINGTON - - - - - December 22, 1883

GEORGE B. CORKHILL - - - EDITOR

## Law for Christmas.

The common law doctrine that corporations have no souls seems to be giving way under some influence, whether it is the hammering that they get in the courts, the example of individuals, the humane spirit of the age, or the principle of evolution or development, we cannot say. But the fact appears to be that the rudimentary germs or embryo of a soul does begin to appear in some bodies corporate.

The law is somewhat at a loss what to do in the presence of this new manifestation. True, it is not often seen, and when signs of a soul in a corporation do appear, it usually is not much of a one. If a dissenting stockholder interposes to object to a donation or beneficent act, the plea is usually either that it was not a donation in fact, but only a selfish appeal to mercenary motives in the form of a gift, or, if the impeachment of a beneficial act be admitted, the plea is that "it was such a little one."

The Long Island Railroad Company, it is said, are going to send a Christmas train down the island on Sunday with turkeys for all the employees, and the directors are going in parlor cars with this jolly freight to superintend the distribution.

The courts have sometimes been at a loss to agree on the rules applicable to the power of directors to spend money in this way; but we apprehend that no objection could be sustained at the suit of the most "impracticable stockholder" against such acts as these.

The principles applicable to voting gratuities have just been discussed in the English courts, and have divided very able judges.

In *Hutton v. The West Cork R. Co.*, recently decided in the English Court of Appeal (*Law Times R.*, December 8, 1883), a majority of a company that was being wound up voted compensation to directors for previous services rendered without expecting compensation. Fry, J., below, and Baggallay, J., in the appellate court, sustained this; but Cotton and Bowen, JJ., overruled them.

Cotton, J., said: Cases were referred to in which the late Master of the Rolls, and Wood, V. C., had determined that matters which were not under the powers expressly given to the directors or the general meeting, were within

the powers impliedly given to them as directors of a going concern. One was the case of *Taunton v. The Royal Insurance Co.* (10 L. T. Rep., N. S., 156; 2 H. & M., 135), before Wood, V. C., where it was held that an insurance company might pay losses arising from lightning, which were not within the loss which they professed to insure against. The other case was *Hampson v. Price's Candle Co.* (34 L. T. Rep., N. S., 71), where Jessel, M. R., held that the directors were at liberty to make and could not be restrained from making a gratuity to their servants when there had been a very good year, by giving each of them who was in their service, and who was of good character, a gratuity equal to a week's wages. But, in my opinion, those cases went on a principle not applicable to the existing state of this company from the time when it handed over its railway, and existed only for the purposes of the winding up. The principal of those cases, as I understand, is, that directors of a trading company necessarily have incidentally the power of doing that which is ordinarily and reasonably done with a view to getting either better work from their servants or with a view to attract customers to them. In the case before the Master of the Rolls he refers to this, that although it is said that nothing of the kind is to be expected again, yet, when such a gratuity is given to servants in a good year, the servants then in the service of the company, whom the directors may reasonably expect to stay, naturally look forward, not as a matter of right, but of liberality, to this, that they will probably be dealt with in a similar way, if by their exertions they get a good profit, and that, therefore, it was a reasonable mode of carrying on the business of a company for the purpose of making it most profitable. But that assumes that the company is a going concern and continuing business, and it is with reference to the effect upon the continuing business and the going concern that the directors are said to have these powers incidentally.

Bowen, J., said, referring to the case of *Hampson v. Price's Patent Candle Co.* (34 L. T. Rep., N. S., 71), the Master of the Rolls there held that the company might lawfully expend a week's wages as gratuities for their servants, because that sort of liberal dealing with servants eases the friction between masters and servants, and is, in the end, a benefit to the company. It is not because it is charity in disguise sitting at the board of directors, because, as it seems to me, charity has no business to sit at boards of directors *qua* charity. There is, however, a kind of charitable dealing which is for the interest of

those who practice it, and to that extent and in that garb (I admit not a very philanthropic garb), charity may sit at the board, but for no other purpose. We are dealing here, not with morals and philanthropy, but with business. I think the reasons which the Master of the Rolls gave in dealing with that case are pretty much the reasons which I have now given. It is for the benefit of the company to deal liberally with their servants. In the same way may be put the remuneration of directors. A company could not always go on if the moment the directors had served six weeks, or months, or a year, they insisted on their immediate remuneration for the past period. That is not the way to do business. The past remuneration of directors seems to me, like the gratuitous wages in *Hampson v. Price's Patent Candle Co.*, to be justifiable, provided it is within the scope of the business of, and secures advantage to, the company. I add one word more about compensation for dismissal of employees. I am by no means prepared to say that directors might not, and that a company might not, when a meritorious servant is leaving their service, present him with a £5 note. I should be very sorry to decide that it might not. All I say is that there must be a limit, and the limit is what is necessary in the reasonable management of the affairs of the company.

Baggallay, J., dissenting, said: I think the affairs of a company are not concluded until the winding up is at an end. I think that the purpose for which the company was to be treated as a living company, viz., the regulation of its internal affairs—extended to the regulation of all its internal affairs, whether such regulation was to be carried out through the medium of the directors or through the medium of the shareholders, and that all its powers continued until the winding up was completed. Then the question arises, which is the substantial question raised here, whether, during the interval between the time when the company was dissolved *quoad* outsiders by the transfer of its undertaking to the Bandon Company, and the time when it should complete its affairs by distributing the balance of the purchase money, which time has not yet arrived, it would be within the right of the company, in regulating their internal affairs, to fix the amount of the remuneration to be paid to the directors, and to fix the amount of compensation to be paid to its officials. I do not propose to enter into any detailed argument in support of the opinion which I have formed; I adopt unreservedly the view expressed by Fry, J., in his judgment as reported.—*N. Y. Daily Register*.

Supreme Court of Pennsylvania.

HOFF vs. KOERPER.

*Husband and wife; Contract of wife; Necessaries; Book entries; Charges of sundries.*

The entry of "sundries" without more in a charge against a married woman is not sufficient proof that the articles of which the charge was made up were necessaries. Where charges are made against a husband and wife the presumption is that the sale has been made on his credit but that presumption may be overcome by other evidence.

The primary presumption where a wife buys necessaries for the family of her husband and herself is that she is acting as his agent, for on him lies the duty of furnishing and paying for them. In order to charge her it must clearly appear that the goods in question were purchased by her on her own credit, and that they were necessaries.

Error to Common Pleas of Schuylkill County.

Assumpsit, by Peter Koerper against William Hoff and Esther Hoff, his wife, for necessaries sold to and contracted for by said Esther Hoff

Pleas, non-assumpsit, payment and set-off with leave to give special matter in evidence, and coverture as to Esther Hoff.

On the trial, before BECHTEL, J., the evidence was as follows: The plaintiff produced a ledger, in which appeared only the postings, and these entries were made as sundries in quite large sums. The explanation of this ledger was that the entries had been taken from two blotters, one of which was kept by the witness, Nicholas Lauer. Neither of the blotters were produced. The court admitted the ledger in evidence, and permitted the clerk to read the gross amounts of the charges to the jury, and this book was an account with, and purported to charge "sundries" to William and Esther Hoff jointly. The only other evidence produced by the plaintiff of the sale of the goods, outside of the ledger, is found in the testimony of Nicholas Lauer. This witness swore he was clerking for the defendant in error, in 1867, and the goods sold were all charged in the blotters to William and Esther Hoff, and carried into the ledger, to the going account of William and Esther Hoff, and that there was no separate account anywhere against Esther Hoff. The witness could not tell what goods were comprised under the head of sundries.

The witness further testified, in regard to charges of pants \$11, vest \$4.50, and a few small items amounting to four or five dollars; "these entries were made separately—the rest of them were made in quantity as sundries, sundry goods; they were notions, dry-goods most of them, there were too many



items to carry into the ledger, and I put them down as sundries from the blotters."

But, upon being recalled by the defendant, he testified that he did recollect "that when she (Mrs. Hoff) first came that I made mention about that the orders from Koerper was that the goods had to be charged to her and William, because Koerper gave me orders to that effect. He (Koerper) said, 'give no goods to Mrs. Hoff unless you charge them to Hoff and his wife.' All the remark she said was: 'All recht,' and that was the last."

The defendant presented, *inter alia*, the following point:

"Upon all the evidence in the case, the verdict of the jury must be for the defendants."

Answer. "We cannot so instruct you. If you find in favor of the plaintiff, you must specify the amount in dollars and cents."

Verdict for plaintiff, \$90.60, and judgment thereon. Whereupon the defendant took this writ, assigning for error, *inter alia*, the refusal of the court to affirm the above point.

JAMES RYON (John W. RYON with him), for the plaintiff in error:

To charge the wife, the plaintiff must prove not only that the debt was incurred for necessities for the support and maintenance of the wife's family, but that it was contracted by herself, or in her name by her authority. *Murray v. Keyes et ux.*, 11 Casey, 384; *Parke et ux. v. Kleeber*, 1 Wright, 251.

A joint promise by the husband and wife is in law but the promise of the husband, and does not make the wife's estate liable for necessities. *Cummings et ux. v. Miller*, 3 Grant, 146; *Parke et ux. v. Kleeper*, *supra*; *Berger v. Clark*, 29 Sm., 340; *Sawtelle's Appeal*, 3 Norris, 306.

HUGHES and FARQUHAR, for the defendant in error:

Book entries against husband and wife are not conclusive evidence of a joint contract. *Rigoney v. Neiman*, 23 P. F. Sm., 330.

It is for the jury to say what was meant by the words "all recht," and they have found that they meant an agreement by Esther Hoff to pay for the goods received. The jury must also say whether the goods furnished were necessities.

May 7, 1883. THE COURT. The jury were properly instructed by the learned judge that the plaintiff could not recover without proving to their satisfaction that the goods in question were purchased by the wife, not as her husband's agent, but on her own account, and also that the articles were necessary for the

support of the family of the husband and wife, defendants below. As was said in *Berger v. Clark* (29 P. F. Smith, 340, 345). "It is a necessary consequence of the decided cases that she must contract in her own behalf. The evidence must as clearly prove this as the pleadings must aver it. The primary presumption, when a wife takes up necessities for the family of her husband and herself, is that she is acting as his messenger or agent, for on him lies the primary duty of furnishing and paying for them. The evidence must overcome this presumption and satisfy the jury that she is acting in her own right in order to bind her separate estate." A joint purchase of necessities by husband and wife is regarded in law as the contract of the husband alone; and, while book entries, charging the goods to them jointly, are presumptive evidence of a sale on his credit, they are not conclusive of that fact. It may nevertheless be shown that they were purchased by the wife and on her credit (*Rigoney v. Neiman*, 23 P. F. Smith, 330). The act enables the wife to bind her separate estate for necessities, but the very essence of her liability is that they were furnished at her request and on her credit. If not so furnished, her separate estate cannot be made liable (*Sawtelle's Appeal*, 3 Norris, 306, 311). Hence it follows that, if the evidence was not such as to bring the case within the principles above stated and justify the submission of the essential facts to the jury, the defendants' second point requesting the court to charge that, "upon all the evidence in the case the verdict of the jury must be for the defendants," should have been affirmed.

In plaintiff's books, the goods were charged to William Hoff and Esther Hoff, the plaintiffs in error, and the presumption arising therefrom was that they were purchased by them jointly. Was there any evidence to rebut that presumption, and warrant the jury in finding that Mrs. Hoff purchased them on her own credit? We think not. The plaintiff below testified that he had no personal knowledge as to how or to whom the goods were sold. He was not in the store; Mr. Lauer attended to the business for him. The learned judge says the plaintiff "does not claim to have any knowledge on the subject of how these goods were sold. He makes no claim to have sold them on the credit of Mrs. Hoff, any further than what may appear, if it appears at all, in the testimony of Nicholas Lauer, the clerk in the store." Lauer testified in substance that he made no bargain with Mrs. Hoff; that he had been instructed by Mr. Koerper not to give her any goods with-



out charging them to her and her husband, and when she came to the store he informed her "that the goods had to be charged to her and William, because Mr. Koerper gave orders to that effect;" to which her only reply was "all recht," meaning all right. He did not inform her why the goods had to be charged to her husband and herself jointly, further than to say that such was Mr. Koerper's order. He does not pretend to say that she made the purchases on her own credit, or that the goods were so furnished to her. Instead of proving, or even tending to prove, that the debt was contracted by the wife in her own name and on the credit of her separate estate, the testimony tended strongly to establish the contrary. But it was insufficient also in other respects. With the exception of a few items, the entries in the ledger (the only book given in evidence) were "sundries," without, in any manner, indicating the articles of which these lumping charges were respectively composed. Referring to charges of "pants, \$11, vest, \$4.50," and a few small items amounting to four or five dollars more, the witness, Mr. Lauer, said "these entries were made separately; the rest of them were made in quantity, as sundries, sundry goods. . . . They were notions, dry-goods, most of them; there were too many items to carry into the ledger, and I put them down as sundries from the blotters." In the absence of the blotters it was impossible for him to say what the articles were, or by whom they were purchased, and, if he could not state, except in that general and indefinite way, what the articles were, how could the jury determine whether they were necessities or not? He did remember, however, that the pants and vest, separately charged as above stated, had been returned and credited to defendants below. The remaining charges, with the exception of a few trifling articles, "sundries" were "sundry goods," but of what these consisted did not sufficiently appear. Assuming that the non-production of the blotters was sufficiently accounted for, the plaintiff was not thereby relieved from the necessity of proving the sale and delivery of the goods, and that they were necessities within the meaning of the Married Woman's Act.

Waiving all objections to the admissibility of the testimony we think it was clearly insufficient to sustain the essential averments of the declaration, that the alleged indebtedness was contracted by the wife and incurred for articles necessary for the support and maintenance of the family, and hence the case should have been withdrawn from the consideration of the jury by instructing them,

as requested in defendants' second point, that upon all the evidence their verdict should be for the defendants.

Judgment reversed.

Opinion by STERRETT, J.

—13 Weekly Notes, 589.

#### **Soldiers' Rights at Hotels.**

#### *New York Court of Appeals.*

ALMIRA HANCOCK, RESPONDENT, vs. THOMAS B. RAND ET AL., APPELLANTS.

Officers of the army and navy and soldiers and sailors, who have no permanent residence which they can call home, may well be regarded as travelers or wayfarers when stopping at public inns or hotels, and to make them chargeable as mere boarders it should be shown that explicit contract had been made which deprived them of the privileges and rights which their vocation conferred upon them as passengers or wayfarers. An establishment kept as and admitted to be a public inn is distinguished from a boarding house. Neither the fixing of the price nor conversation in reference to the length of stay of the visitor can alter or change its character or the relationship between landlord and guest.

A guest who pays for his meals as ordered in a restaurant belonging to a hotel does not become a boarder by occupying rooms at reduced prices and for a stipulated period.

Whether an understanding as to price, and conversation as to probable length of stay of a guest constitutes an agreement, is a question of fact.

MILLER, J. :

The plaintiff claims to recover in this action the value of property stolen while a guest at the hotel of the defendants in the city of New York.

The findings of the referee show that the plaintiff was an inmate of the defendants' hotel from November, 1873, until June, 1874, and that the articles lost were taken from the rooms occupied by the plaintiff in the month of March, 1874; that the husband of the plaintiff, General Hancock, was an officer in the United States army, and that in November, 1873, he applied for rooms and board at the defendants' hotel for himself and family; that after some conversation between the defendants and said Hancock, in regard to himself and family remaining at defendants' hotel, in which certain rooms in a private house adjoining said hotel, which the defendants were then using in connection with the same, were mentioned, it was said by General Hancock that he expected to remain until the following summer, provided everything was satisfactory, and provided also that he was not sooner ordered elsewhere on military duty; that the defendants offered the terms which they would take for said rooms, which terms General Hancock accepted on the understand-

ing that he should continue to occupy them until the next following spring or summer, provided everything was satisfactory, and provided also he was not sooner ordered away on military duty. The referee also found that General Hancock and family, immediately prior to their going to the hotel of the defendants, had been boarding at another hotel in New York city, and had no permanent home anywhere; that prior to the year 1873, and ever since that time, the home of General Hancock had been wherever his military headquarters were, and that such headquarters, during that time, have been at different places.

The referee refused to find, as requested by the defendants, that any substantial agreement had been made by General Hancock as to the length of time he and his family should occupy said rooms.

We think that the finding of the referee as to the understanding under which General Hancock and family came to the defendants' hotel is sufficiently supported by the evidence, and that his refusal to find that there was any substantial contract between the parties was fully justified. It appears very distinctly by the proof that no specified time was absolutely fixed or agreed upon for the stay of General Hancock and family at the defendants' hotel, and no express contract was made in regard to the same. According to the evidence, the general and family had a perfect right to leave at any time after the contract was made, and were not bound to remain for even an entire day; the moment General Hancock was dissatisfied he and his family had a right to leave the hotel; so, also, if ordered elsewhere he had a right to leave. It rested with him in these contingencies to do and act exactly as he pleased. It was a fluctuating agreement, depending upon his own will and caprice, and it cannot be said that the minds of the parties met as to any specific time whatever. The defendants could not have recovered damages by reason of his leaving at any moment. As an officer in the army, his duty might at any time have called him away to some distant and remote place; and individually he had the right to say when he should go without consulting the defendants. Really and actually he was but a transient guest, who had the right to come and go whenever he pleased. Officers of the army and navy and soldiers and sailors, who have no permanent residence which they can call home, may well be regarded as travelers or wayfarers when stopping at public inns or hotels, and to make them chargeable as mere boarders it should be shown satisfactorily that an explicit

contract had been made which deprived them of the privileges and rights which their vocation conferred upon them as passengers or travelers. General Hancock and the defendants evidently had this in view in the conversation which took place between them in regard to the former's stay at the latter's hotel. The fact that General Hancock was subject to marching orders at any moment, and that this contingency was expressly provided for, makes a wide distinction between the case at bar and one which possesses no such features. This difference and the circumstances connected with it should be sufficient to take the case out of the ordinary rule which applies between an innkeeper and a permanent boarder, and may well maintain the rule we had laid down without disturbing the relationship which exists between a guest and a boarder. In view of the evidence presented and the findings of the referee, we think the defendants are bound within the reason of the rule under which an innkeeper is held liable for the goods and property of his guest. As a soldier, General Hancock was unable to acquire a permanent home, and by reason of his profession, was obliged to live temporarily and for uncertain periods of time at different places and with innkeepers and others who make provision for the entertainment of guests and travelers. He was necessarily a transient person, liable to respond to the call of his superiors at any moment and to change the locality of himself and family. The defendants kept a hotel or inn, taking care of transient guests, some staying for a longer, some for a shorter period. General Hancock, for himself and family, paid for their meals the same as other transient guests, and by express agreement they were at liberty to leave at any time they saw fit. Under these circumstances no reason exists why they should not be protected as well as the other travelers or guests at the hotel. It is very evident from the testimony that no absolute and express contract was made for the hiring of the rooms and the board of General Hancock and his family for any stipulated period of time, and the most that can be claimed on the part of the appellants is, that it was a question of fact for the consideration of the referee, and for him to determine, whether General Hancock and family were travelers and guests or boarders. On the one hand, as already stated, General Hancock was a transient person and could not depend upon remaining for any particular period of time at any place. He was without any permanent residence or home, and it positively appears that he made no arrangement for any permanent occupation of the

rooms at defendants' hotel. On the other hand, separate apartments were kept for boarders and for transient persons by the defendants, and the general and his family were registered among the former, but it does not appear that he knew this fact, and hence it cannot well be claimed that he had grounds for supposing and understood that he and his family were boarders and not guests. The authorities hold beyond question that the fixing of the price does not make the party a boarder. See *Pinkerton v. Woodward*, 33 Cal., 557; *Berkshire Woolen Co. v. Proctor*, 7 Cush, 417; *Norcross v. Norcross*, 53 Me., 169; *Walling v. Potter*, 35 Conn., 183.

The fair intendment from the evidence is that General Hancock did not go to defendants' hotel under a contract hiring the rooms for a season, but that he was a transient person who had the right to leave at any moment, the same as any other guest.

Regarding the evidence as it stands, and conceding the facts in reference to the question whether General Hancock and family were travelers and guests or boarders, there would seem to be but little question that the weight of the testimony is in favor of the proposition that they were travelers or way-farers, and that there was no hiring of the rooms of the defendants for a season or a specified time. Even if there might have been a doubt as to whether there was a hiring for a term, as the referee has found in favor of the plaintiff upon this question, we cannot disturb the finding, and it should be upheld. In considering the question discussed it should not be overlooked that the St. Cloud Hotel was kept as a public inn in every sense, and was clearly distinguishable from a boarding house; its proprietors did not claim that it was a boarding house, and there is no evidence to show that it was considered in that light, and neither the fixing of the price nor the conversation had in reference to the probability of General Hancock and family remaining for a period of time could alter or change its true character. Hotels in modern days are differently conducted from what they were in times gone by. Furnishing rooms at a fixed price, and meals at prices depending upon the orders given at the usual hotel rates, constitute a material difference in the system of keeping hotels from that which formerly existed. The defendants conducted a restaurant in connection with their hotel, at which meals were furnished in accordance with fixed prices. General Hancock and family, after the first month of their stay at the defendants' hotel, and at the time the property in question was stolen, took their

meals at the restaurant, for which they paid prices for each meal the same as other guests or travelers. So far then as this is concerned they must be considered the same as other guests. Certainly they were not boarders in the sense in which that term is understood. As they were guests at the restaurant at the time when the loss occurred, and paid as such, it is difficult to see upon what principle it can be urged that they were boarders because their lodgings were in the hotel, or in rooms connected therewith. To sustain such a rule would make them boarders in part and guests in part. This would be unreasonable, the more so in this case because the proof does not establish a contract for any fixed time.

The appellants' counsel claims that the referee, having found that General Hancock and family for several years prior to going to the St. Cloud Hotel had been boarding at another hotel in New York City, therefore they were not travelers or passengers but were at their home, and were citizens of New York. As we have already seen, the general, being a soldier and liable to be called to distant and remote places by order of the Government, and thus obliged to change his headquarters, had no residence in the city of New York, and when stopping at a hotel awaiting orders, with the right to leave at any moment, he must be regarded as a transient person, the same as any other traveler or passenger. At common law the inn-keeper was compelled to furnish lodgings and entertainment for travellers and passengers, and he was bound to protect the property they brought with them, and was liable if it was lost or injured (see *Mowers v. Feathers*, 61 N. Y., 34). "The length of time that a man is at an inn makes no difference—whether he stays a week or a month or longer; so, always, that, although he is not strictly transient, he retains his character as a traveler," but he may by a special contract to board and sojourn make himself a boarder, and, being such, the inn-keeper is not liable. (Story on Bail, sec. 477; 2 Parsons on Contracts, 150, et seq.)

The decisions have not been entirely harmonious as to whether fixing in advance the price to be paid and the length of the stay has the effect in law to constitute such person a mere boarder or lodger and to deprive such visitor of the character of guest. There are numerous decisions in the books of recent date which hold that where there is a special agreement as to time and price that does not absolutely disturb the relationship of inn-keeper and guest. (*Pinkerton v. Woodward*, 33 Cal., 557; *Berkshire Woolen Co. v. Proctor*, 7 Cush., 417; *Norcross v. Norcross*, 53

Me., 169; Walling v. Potter, 35 Conn., 183; McDaniels v. Robinson, 26 Vt., 316; see also Parker v. Flint, 12 Modern, 255).

These cases indicate a tendency in the courts to conform the old rule to the changes made in hotel keeping in modern times.

We are referred by the learned counsel for the appellants to numerous cases to sustain the doctrine he contends for, among which are Vance v. Throckmorton, 5 Bush (Ky.), 41; Manning v. Wells, 9 Hump. (Tenn.), 746; Hirsh v. Byers, 29 Mo., 469; Pollock v. Landis, 36 Iowa, 651; Lusk v. Belok, 22 Minn., 468; and others.

A careful examination of these authorities discloses that in each of them it is very apparent that the relation of landlord and guest did not exist, and that the party who claimed damages of the inn-keeper was in every case a boarder beyond any question, and that in most, if not all of them, there was a special contract as to time and price which established that relationship. None of them are analogous to the case at bar, and in none of them was it made to appear that the plaintiff's occupation was of a character which rendered them liable, upon call, to remove from their location to go elsewhere. Besides, the proof shows in all these cases a special contract which could not be terminated, as in the case at bar, at any moment, or which was liable to be concluded by the orders of a higher authority. The cases cited are therefore not in point, and cannot control the decision of the question considered.

It must be borne in mind, in considering the question discussed, that the referee refused to find that there was any substantial contract for plaintiff's stay at the hotel, and that he found differently, and hence it may well be held, in entire harmony with the cases last cited, that the fixing of the price did not change the relationship of the parties as inn-keeper and guest. The common law rule which fixes the liability of an inn-keeper to his guest is a salutary one and imposes no needless hardship upon him, and it should be administered according to its spirit without regard to technical distinctions. The statute (Laws of 1857) was enacted for the benefit of the inn-keeper, and, if complied with, furnishes full and ample relief from the liability incurred under the common law. The defendants here failed to comply with that statute by their neglect to conform to its provisions and have no ground to complain when made amenable for such failure. It is no hardship in the law that they are called upon to answer for losses occasioned by their own neglect. It is to be presumed that every inn-

keeper sufficiently guards the hotel under his charge so as to protect its inmates from the depredations of criminals. When they fail to do this and carelessly omit to notify the inmates where their valuables can be fully protected, no reason exists in the law or in justice why they should not respond for losses attributable to their own remissness. The defendants here were manifestly wrong in failing to comply with the statute cited, and as they have not brought themselves within any rule of law which exempts them from the liability incurred by inn-keepers generally in their relation to travelers and guests, we are unable to see why they should be relieved in the case at bar.

The findings of the referee and his refusals to find were clearly right, and, unless some error exists in the rulings as to the evidence, they should be sustained.

We have given due attention to the other questions raised, and can discover no ground of error which would authorize a reversal of the judgment.

The judgment should therefore be affirmed.  
—N. Y. Daily Register.

*Mortgage in Trust for Benefit of Wife for bona fide Debt, leaving Name of Trustee blank, valid.*—An insolvent debtor duly executed and delivered a mortgage of lands to a trustee, to secure a *bona fide* indebtedness to his wife. The name of the trustee was omitted in the granting clause, and also in the covenants of the mortgage; but the grant was to — and his assigns forever in trust for the use and benefit of his wife, her heirs and assigns. In the clause of defeasance was a copy of a promissory note signed by the debtor and payable to the assignee for the use and benefit of his wife. The mortgage was duly recorded, and afterwards other parties obtained judgment liens on the lands.

*Held:* 1. That the mortgage, taking all its parts together, furnishes the means to supply the omission of the name of the grantee, and it was not error to so reform it as to supply this omission.

2. That the mortgage created a valid lien on the lands from the date when it was filed for record.

3. A mortgage thus made, to secure a *bona fide* indebtedness of the mortgagor to his wife, does not enure to the benefit of all the creditors of the mortgagor. [Hitzeman v. Donnel. Supreme Court Commission of Ohio.]

THE secret of success is not so much in catching on as in holding on after you catch on.

**Statements of Prisoners through Counsel.**

On December 3. the Attorney-General wrote to the Lord Chief Justice, drawing his attention to the fact that on Saturday, during the trial of Patrick O'Donnell, Mr. Russell proposed to state to the jury the instructions he had received from the prisoner's solicitor, and thereby convey to the jury the prisoner's account of every detail of the transaction they were inquiring into. Upon objection being taken to this course, Mr. Justice Denman said that (there being authority in favor of the statement being made) he should, while refusing to allow Mr. Russell to proceed, reserve a case for the consideration of the question by the Court of Crown Cases Reserved. Sir Henry James pointed out the inconvenience of the state of practice as thus illustrated, and added that he was under the impression that the judges had held a meeting and come to a resolution upon the subject; but Mr. Justice Denman informed me this was not so. Lord Coleridge replied as follows:—

"Royal Courts of Justice, Dec. 4, 1883.

"My Dear Mr. Attorney-General,—I entirely agree with you as to the practical importance of the question you have brought to my attention. The paper I enclose will show you that it is no new subject to me. Immediately after the trial of Lefroy at Maidstone, in which, as you may remember, Mr. Montagu Williams claimed to do what Mr. Russell did, I brought the matter before the judges, with the result which the paper will show you. At Maidstone the opinion of Lord Chief Justice Cockburn was said to have been founded on or supported by Lord Justice Lush and Mr. Justice Hawkins. Both those learned judges were present at the meeting called by me, and both disavowed in the strongest way ever having ruled or been inclined to rule in the manner suggested. Mr. Justice Denman authorises me to say that if he had remembered the very strong judicial opinion which I enclose he should have acted on it, and have refused a case if one had been asked for. Mr. Justice Stephen authorises me to say that he should, as at present advised, not vote against the rule as formulated by the master of Rolls, but approves of it, and should act upon it."

"My reason for bringing the matter before a meeting of the judges was this—that directly after the passing of the Prisoners' Counsel Act, Lord Denman, the then Chief Justice, called the judges together, and they (as appears from the Judges' Book) agreed upon a course of practice which has always since been followed. It seemed to me that the question discussed in your letter was one of practice also, and that the best way of settling it

was to pursue the course I took. Perhaps it might be well to make this resolution generally known, as there may considerable difficulty in making the question the subject of a case reserved. Generally I agree with you that the practice is wrong and not to be permitted, and that if permitted at all, it must, in justice and fairness, carry with it the right of reply on the part of counsel for the prosecution. Believe me to be, my dear Mr. Attorney-General, your obliged and faithful servant,

"COLERIDGE.

"The Attorney-General, Q. C., M. P."

The paper enclosed was as follow:—

"At a meeting of all the judges liable to try prisoners, held in the Queen's Bench room on November 26, 1881 (Present—Lord Chief Justice Coleridge, Lord Justice Baggallay, Lord Justice Brett, Lord Justice Cotton, Lord Justice Lush, Lord Justice Lindley, Justice Grove, Justice Denman, Baron Pollock, Justice Field, Justice Manisty, Justice Hawkins, Justice Lopes, Justice Fry, Justice Stephen, Justice Bowen, Justice Mathew, Justice Cave, Justice Kay, Justice Chitty, Justice North), Lord Coleridge stated the subjects for which the meeting was summoned, and Lord Justice Brett moved the following resolution:—"That in the opinion of the judges it is contrary to the administration and practice of the criminal law, as hitherto allowed, that counsel for prisoners should state to the jury, as alleged existing facts, matters which they have been told in their instructions, on the authority of the prisoner, but which they do not propose to prove in evidence."

"Justice Stephen moved the following amendment:—"That in the opinion of the judges it is undesirable to express any opinion upon the matter."

"This amendment, having been put to the meeting, was negatived by nineteen votes to two. The original motion was then put, and carried by nineteen votes against two (Justice Hawkins and Justice Stephen diss). The question of the propriety of laying down a rule as to the practice of allowing prisoners to address the jury before the summing up of the judge, when their counsel have addressed the jury, was then considered, and after some discussion was adjourned for further consideration."

PROF. BURT G. WILDER says that a student should never sleep less than eight hours, nor study directly after meals. The Professor should advance this idea cautiously. He may find students eating half a dozen meals a day.

## The Courts.

### U. S. Supreme Court Proceedings.

DEC. 10, 1883.

The following persons were admitted to practice:

George R. Todd, of Ouray, Col.; C. Larne Munson, of Williamsport, Pa.; William A. Wallace, of Clearfield, Pa.; O. H. Horton, of Chicago, Ill.; George Biddle, of Philadelphia, Pa.; Wendell Phillips Bowman, of Philadelphia, Pa.

No. 101. Joseph P. Leroux et al., appellants, v. Joseph L. Hudson, assignee, et al. Appeal from the circuit court of the United States for the eastern district of Michigan. Decree reversed with costs, and cause remanded, with directions to dismiss the bill. Opinion by Mr. Justice Blatchford.

No. 100. Max Schott, appellant, v. Joseph L. Hudson, assignee, et al. Appeal from the circuit court of the United States for the eastern district of Michigan. Decree reversed with costs, and cause remanded with directions to dismiss the bill. Opinion by Mr. Justice Blatchford.

No. 128. Oakley Randall, plaintiff in error, v. the Baltimore & Ohio Railroad Co. In error to the circuit court of the United States for the district of West Virginia. Judgment affirmed with costs. Opinion by Mr. Justice Gray.

No. 104. Stephen Percy Ellis et al., appellants, v. Jefferson Davis. Appeal from the circuit court of the United States for the district of Louisiana. Decree affirmed with costs, and cause remanded to the circuit court of the United States for the eastern district of Louisiana. Opinion by Mr. Justice Matthews.

No. 132. Elizabeth M. Townsend, appellant, v. James G. Little et al. Appeal from the Supreme court of Utah territory. Decree affirmed with costs. Opinion by Mr. Justice Woods.

No. 38. The United States, plaintiff in error, v. Frank L. Jones, administrator, &c., et al. In error to the supreme court of the State of Wisconsin. Judgment affirmed. Opinion by Mr. Justice Field.

No. 62. Joseph T. Thomas, trustee, appellant, v. the Brownville, Fort Kearney & Pacific Railroad Co. et al. Appeal from the circuit court of the United States for the district of Nebraska. Decree reversed with costs, and cause remanded with directions to enter a decree in conformity with the opinion of this court. Opinion by Mr. Justice Miller.

No. 72. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard et al., executors, &c.

No. 73. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard.

No. 74. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard.

No. 619. The Canada Southern Railway Company, plaintiff in error, v. William H. Gebhard et al., executors, &c. In error to the circuit court of the United States for the southern district of New York. Judgment reversed with costs, and cause remanded with directions to enter judgments on the facts found in favor of the railway company. Opinion by Mr. Chief Justice Waite.

No. 1223. The United States, ex rel. William W. Warden, plaintiff in error, v. William E. Chandler,

Secretary of the Navy. Motion to advance denied. Announced by Mr. Chief Justice Waite.

No. 374. The Susquehanna Boom Co. et al., plaintiffs in error, v. the West Branch Boom Co. Motion to dismiss submitted.

No. 1226. William Pitt Kellogg, appellant, v. the United States. Appeal from Court of Claims. Docketed and dismissed.

No. 975. The Corporation of Sherman, Nebraska, plaintiff in error, v. Henry W. Simonds. Submitted under twentieth rule.

No. 152. John T. Gilmer et al., plaintiff in error, v. Chester Higley. Argued.

No. 153. Isolina E. Howard, appellant, v. Adelaide S. Carusi et al. Argument commenced.

DEC. 11, 1883.

Aldace F. Walker, of Rutland, Vt., and Frederick B. Jennings, of New York City, were admitted to practice.

No. 171. James Johnson, plaintiff in error, v. the Texas & Pacific Railway Co. In error to the circuit court of the United States for the eastern district of Texas. Dismissed per stipulation; costs to be paid by the defendant in error.

No. 153. Isolina E. Howard, appellant, v. Adelaide S. Carusi et al. Argument concluded.

No. 154. The Town of Ohio, plaintiff in error, v. Benjamin E. Potter. In error to the circuit court of the United States for the northern district of Illinois. Dismissed with costs.

No. 155. Bessie Allen et al., appellant, v. Thomas F. Withrow et al. Argument continued.

DEC. 12, 1883.

Charles H. Fiske, of Boston, and George Wadsworth, of Buffalo, were admitted to practice.

No. 1068. Henry W. Holland, appellant, v. Laura A. Challen. Submitted under twentieth rule.

No. 155. Bessie Allen et al., appellants, v. Thomas F. Withrow et al. Argument concluded.

No. 156. The United States, appellant, v. Seth B. Ryder et al. Mr. Assistant Attorney General Maury stated to the court that the United States had no interest in the prosecution of this appeal; and the cause was argued by Mr. J. Hubley Ashton for sureties of Otis Woodruff et al., and by Mr. John R. Emery for the appellees.

No. 157. The United States, plaintiff in error, v. Daniel M. Carey et al.; and

No. 158. The United States, plaintiff in error, v. Daniel M. Carey. Submitted.

No. 159. John J. Albright et al., appellants, v. Samuel Emery et al. Argument commenced.

DEC. 13, 1883.

The following persons were admitted to practice:

David Calman, of New York City; Augustus T. Gurlitz, of Brooklyn, N. Y.; B. W. Perkins, of Oswego, Kansas.

No. 916. Alfred Slidell et al., appellants, v. Thomas J. Emmler et al.; and

No. 917. Alfred Slidell et al., plaintiffs in error, v. Charles Tschirn. Advanced and assigned for argument with Nos. 587 and 588.

No. 1071. The Burrow-Giles Lithographing Co., plaintiff in error, v. Napoleon Sarony. Submitted under twentieth rule.

No. 159. John J. Albright et al., appellants, v. Samuel Emery, sr., et al. Argument concluded.

No. 892. A. U. Wyman, Treasurer of the United States, plaintiff in error, v. the United States, ex rel. E. P. Halstead, administrator, &c. Argument commenced.

DEC. 14, 1883.

No. 709. The American Bible Society et al., appellants, v. Mary Price. Submitted under thirty-second rule.

No. 892. A. U. Wyman, Treasurer of the United States, plaintiff in error, v. the United States, ex rel. E. P. Halstead, administrator, &c. Argument concluded.

No. 160. Herman S. Bachman et al., plaintiffs in error, v. James Lawson et al. Argued.

No. 68. Robert and William Mitchell, plaintiffs in error, v. William G. Clark. Argument commenced.

# **SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM.**

DEC. 10, 1883.

Johnston v. District of Columbia. Decree below denying injunction and dismissing bill affirmed. Opinion by Mr. Justice James.

Janin v. Gilmore. Decree below denying injunction and dismissing bill affirmed. Opinion by Mr. Justice Hagner.

Morrow v. James. Decree below dismissing bill reversed. Opinion by Mr. Justice Cox.

Keyser v. Hitz. Decree signed.

Walter et al. v. Ward. Motion for rehearing made by Mr. Percy.

Woodruff v. National Shelf & File Co. On hearing. Motion to dismiss partially heard.

Estate of John G. Stafford settled.

Looney v. Quill, and Quill v. Looney. On hearing.

DEC. 11, 1883.

Keyser v. Hitz. Decree made of record.

Morrow v. James. Decree signed.

Looney v. Quill, and Quill v. Looney. On hearing.

DEC. 12, 1883.

Weiner v. Utermehle. Bill dismissed with costs.

Lord v. O'Donoghue. On hearing.

DEC. 13, 1883.

Lord v. O'Donoghue. On hearing.

DEC. 14, 1883.

Lord v. O'Donoghue. Order to dismiss.

Hart v. Gorham. Motion to dismiss.

Farley v. Green. Submitted.

Sacchi v. Dye. Bill dismissed.

## **EQUITY COURT.—Justice James.**

DEC. 8, 1883.

Smith v. Beach. Sale confirmed. Conveyance ordered and reference ordered.

Sheahan v. Davidson. Sale confirmed.

Gallant v. Gallant. Testimony before J. H. Taylor ordered taken.

Dartt v. Devereux. Appearance of absent defendant ordered.

DEC. 10, 1883.

Freedman Saving and Trust Co. v. Barton. Sale ratified nisi.

Cousins v. Strasburger. Time to take testimony limited.

Combs v. Combs. Defendant ordered to pay for one session of complainant's testimony.

Ashton v. Ashton. Divorce granted.

Cassel v. Kaiser. Sale ratified finally and conveyance ordered.

Hilton v. Devlin. Hearing in the General Term in the first instance ordered.

DEC. 11, 1883.

Craig v. Craig. Divorce granted.

Walker v. Birch et al. Pro confesso as to Birch and Swinton ordered.

Jones v. Jones. Bill dismissed.

Burns v. Burns. Testimony ordered taken before Examiner E. D. T. Brady.

Hagner v. Randall. Sale finally ratified nunc pro tunc.

Calvert v. Calvert. Order appointing John D. Coughlin guardian ad litem.

Keating v. McLaughlin. Sale ratified nisi.

Borland v. Corporation of Washington. Injunction denied and bill dismissed.

Richardson v. Clark. Motion to postpone sale denied.

Callaghan v. English. Trustee authorized to pay \$295.24 to Mary J. English.

Totten & Browning v. Bryant. Hearing continued.

DEC. 12, 1883.

Phoenix Mutual Life Insurance Co. v. Grant. Receiver authorized to insure property.

Miller v. Miller. Judgment of costs by petitioner entered.

Cady v. Lawler. Sub lot 1, square 110, released from complainant's lien.

Follin v. Golden. Auditor's report confirmed.

Webb v. Dulaney. Decree adjusting rights of parties.

DEC. 13, 1883.

Browning v. Hunt. Sale ordered, and S. T. Thomas and Charles A. Walter appointed trustees to sell.

Miller v. Miller. Pro confesso against defendant, and reference to Examiner A. A. Brooke to take testimony.

Schillinger v. Cranford. Testimony ordered taken before Examiner John J. Linney.

Riley v. Riley. Order appointing John Ridout guardian ad litem.

Moore v. Harrison. Sale ratified nisi.

Shoemaker v. Campbell. Rule on J. W. P. Myers returnable December 18.

Burt v. Burt. Divorce granted.

DEC. 14, 1883.

Eldridge v. Eldridge. Leave to file cross bill granted.

Cady v. Lawler. Leave to file cross bill.

Hyde v. Fitzgerald. Testimony ordered taken before Examiner John N. Oliver.

Ragan v. Haight. Auditor's report confirmed.

## **CIRCUIT COURT.—Justice Mac Arthur.**

DEC. 8, 1883.

Gardner & Co. v. Thompson et al. Motion for judgment overruled.

Moses v. Taylor. Motion for judgment stricken out.

Moses & Son v. Taylor. Same.

Galt & Co. v. Dowling (two cases). Motion for judgment of condemnation overruled.

Barber v. Cahill. Motion for rehearing refused.

Rich & Co. v. Chandler. Motion withdrawn. Death of S. Rich suggested.

Shoemaker v. Evans. Motion for costs granted.

Platt v. Evans. Same.

Laskey v. Whitmore. Motion for judgment overruled.

Fifth Baptist Church v. Baltimore & Potomac Railroad. Motion for new trial overruled.

United States v. National Bank of the Republic. Submitted, and judgment for \$966.37.

Cox v. Riley. Order to file bill of particulars.

**May v. Davis.** Demurrer to the fourth replication sustained.

DEC. 10, 1883.

**Bamberger v. Baltimore & Potomac Railroad Co.** Death of plaintiff suggested, and Hannah B. Bamberger, administratrix, made party.

**Foster v. Hunter.** Judgment confessed.

**Costello v. Knight.** On trial.

DEC. 11, 1883.

**Beveridge v. Purdy.** Death of defendant suggested, and administrators made parties.

**Bogert v. Holladay.** Judgment by default.

**Queen v. Holladay.** Same.

**Pinkerton v. Holladay.** Same.

**Costello v. Knight.** On trial.

DEC. 12, 1883.

**Willet & Libby v. Howlet.** Referred to the auditor.

**Costello v. Knight.** Jury out.

DEC. 13, 1883.

**Costello v. Knight.** Verdict for the plaintiff for \$500.

**Boswell, use, etc., v. Totten.** Juror withdrawn, and leave to amend declaration.

**McMahon v. Talliaferro et al.** Verdict for defendant for \$50.22.

DEC. 14, 1883.

**Williams v. Hynes et al.** Death of Hynes suggested.

**Andrews v. Murdock.** Jury out.

**Simmons v. Pomeroy.** On trial.

#### CRIMINAL COURT.—Justice Wylie.

DEC. 5, 1883.

**J. Adam Roth;** unlicensed bar; not guilty.  
**Frederick Rose;** unlicensed bar; guilty; notice of a motion for a new trial.

**Andrew O'Neil;** unlicensed bar; not guilty.

**Catherine Dentz;** unlicensed bar; not guilty.

**Adam Geiger;** unlicensed bar; a nolle pros. entered.

DEC. 6, 1883.

**John Bigelow;** unlicensed bar; a nolle pros. entered.

**Henry Beusecke;** same; same.

**John H. Campbell;** same; same.

**John Albers;** same; same.

**John J. McMahon;** Sunday bar; plead guilty; fined \$30.

**John Scanlon;** unlicensed bar; not guilty.

**John Reed;** tapping water main without permit; plead guilty; fined \$30.

**Joseph Flaith;** unlicensed bar; a nolle pros. entered.

**John J. Torrens;** unlicensed bar; guilty; notice of a motion in arrest of judgment.

**Levi Vansciver;** unlicensed bar; recognizance forfeited.

**George W. Cooper;** unlicensed bar; not guilty.

**Michael Leach;** unlicensed bar; guilty; notice of a motion in arrest of judgment.

**Martin Franklin;** petit larceny; recognizance taken in the sum of \$500.

**Patrick B. Cassidy;** unlicensed bar; guilty; notice of a motion in arrest of judgment.

**Bernard Newmeyer;** unlicensed bar; on trial.

DEC. 7, 1883.

**Bernard Newmeyer;** unlicensed bar; jury disagreed and discharged.

**Albert Becket;** policy; bond fixed at \$500.

**Richard J. Marshall;** Sunday bar; recognizance forfeited.

## The Courts.

### CIRCUIT COURT.—New Suits at Law.

DEC. 17, 1883.

24980. **James L. Davis v. Granville F. Hyde.** Note, \$675. Piffs atty, C. M. Mathews.

24981. **The U. S. ex rel. Elias C. Budinet et al v. Wm. A. Phillips.** Account, \$22,600. Piffs atty, L. H. Pike.

DEC. 18, 1883.

24982. **John H. Davis v. Mrs. Annie Cole.** Appeal.

24983. **Joseph W. Stryker v. John F. Kelly.** Account, \$114. Piffs atty, C. R. May.

24984. **M. Friedman & Son v. Louis Kaufmann.** Account, \$699. Piffs atty, N. H. Miller.

DEC. 19, 1883.

24985. **Henry M. Glitt v. John F. Kelly.** Account, \$119. Piffs atty, C. R. May.

DEC. 21, 1883.

24986. **Theodore A. Mills v. Jesse B. Wilson et al.** Issues from probate. Piffs attys, Cook & Cole. Defs atty, T. A. Lambert.

### IN EQUITY.—New Suits.

DEC. 12, 1883.

8828. **George H. Taylor et al. v. Chas. F. Mardens et al.** For account, &c. Com. sols., Cook & Cole.

DEC. 13, 1883.

8829. **Thomas Cousins et al. v. Robert H. Hunter et al.** Judgment creditors' bill. Com. sols., Edwards & Barnard and I. Williamson.

8830. **Emma J. Davis v. Elias Davis.** For divorce. Com. sol., R. A. Lockwood.

8831. **Benjamin U. Keyser v. Jane C. Hiltz et al.** Judgment creditors' bill. Com. sols., Elliot & Robinson.

DEC. 15, 1883.

8832. **Richard Laurenson et al. v. Lorin M. Saunders et al.** To marshal securities. Com. sol., H. B. Moulton.

DEC. 18, 1883.

8833. **Margaret C. Stoddart v. Catherine Booth et al.** For partition. Com. sol., G. E. Hamilton.

8834. **Laura V. Godey v. Wm. H. Godey.** For divorce. Com. sols., Cook & Cole.

8835. **Isabella J. Mann v. James C. Mann.** For divorce. Com. sols., Cook & Cole.

8836. **Mary Nolan v. Michael Nolan.** For divorce. Com. sols., Hine & Thomas.

8837. **Kate E. Masl v. Philip C. Masl.** For divorce. Com. sol., T. A. Lambert.

DEC. 19, 1883.

8838. **Arthur Rooney & Co. v. Margaret Harvey.** To sell. Com. sol., I. Williamson.

DEC. 21, 1883.

8839. **Oatharine Diggins v. Joseph Doherty et al.** To annul a deed and to sell. Com. sol., B. H. Webb.

8840. **Katie McDonald v. Joseph McDonald.** For maintenance. Com. sols., Hancock & Griswold.

### PROBATE COURT.—Justice Hagner.

DEC. 7, 1883.

Estate of William Martin; order of sale.

Estate of John G. Stephenson; petition of George P. Zurhorst, for letters of administration filed.

Estate of Laura J. Griner; rule on Josephine Keenan returnable December 17, 1883.

Estate of George W. Thompson; letters of administration issued to H. B. Moulton on bond of \$1,800.

Estate of Elizabeth B. Gibbs; order appointing George Kellogg administrator on bond of \$2,000 and guardian on bond of \$3,000.

Estate of Susanna V. Walker; answer of R. H. Helphenstine and affidavit of George H. Read and replication of Margaret V. Walker, by Edwards & Barnard, attorneys, filed.

Estate of Napoleon Hudlin; proof of publication filed and order made appointing George C. Brown administrator on bond of \$300.

Estate of Violetta L. Sprigg; executed, bonded and qualified.

In re Gilbert D. Fox, guardian; order authorizing payment of \$100 medical care, etc., of wards, prior to the guardian's appointment and making an allowance of \$25 per month for maintenance of wards.

Estate of Ida K. Davie; petition of Nellie M. Gardner for revocation of probate of will and rule on executor returnable December 21.



In re John Golden, guardian; discharge of rule to show cause.

Estate of Albert M. Perrottel; proof of publication filed, will admitted to probate and letters of administration issued to Charles O. Duncanson on bond of \$200.

In re George Bogus; order appointing petitioner guardian to the orphans' of Edward Bahr on bond of \$1,200.

Estate of Thomas Swann; will and codicil admitted to probate and record and letters testamentary issued to James Lowndes and Charles S. Carter on a bond of \$1,000.

Estate of George Gebhart; answer of administrator to rule to show cause filed.

Estate of Edwin Dade; will admitted to probate and letters testamentary issued to Louisa Dade on bond of \$500.

DEC. 14, 1883.

Estate of William H. Craig; order appointing Henry C. Craig administrator on bond of \$1,400.

Estate of John Frawley; order appointing Jeremiah F. Downey administrator on bond of \$3,500.

Will of John C. Schaad; admitted to probate and record and letters testamentary issued.

Estate of Alfred Thompson; order appointing Alfred Thompson, Jr., administrator on special bond of \$200.

Estate of Hart L. Strasburger; administratrix to give additional bond in the sum of \$10,000.

Estate of Frances E. Berry; will admitted to probate and letters testamentary issued to Mary A. S. Cary on bond of \$100.

In re Ann Frances Gridley; order appointing her guardian to the minor children of Elizabeth G. and Charles E. Robinson on bond of \$2,500.

Estate of Francis M. Geier; sale of personal property ratified.

Estate of Mary E. Mahoney; order revoking order appointing John W. Ross administrator.

Estate of David Moore; will admitted to probate and record and letters testamentary issued to James L. Barbour on bond of \$3,000.

Estate of Mary G. Harris; order appointing Robert S. Chew administrator on bond of \$20,000.

Estate of Patrick Hanaphy; letters testamentary issued to James Higgins on bond of \$3,500.

Estate of Byron A. Kidder; will admitted to probate and letters testamentary issued to Thomas Greer on bond of \$1,000.

Estate of John G. Stephenson; order appointing George P. Zarhorst administrator on bond of \$300.

Estate of John L. Simaub; order appointing Charles P. Miller guardian of the orphan children on bond of \$200.

Estate of Noble Young; order appointing Albin Scholpf, B. F. Warner and Thomas Wagman appraisers to value the real estate.

Estate of Ambrose W. Thompson; commission to take proof and executors to show cause why they should not qualify.

Estate of George G. Koehler; petition that letters be issued to Martha Koehler.

Estate of William Shoemaker; will admitted to probate and Messrs. John J. Johnson and John F. Ennis appointed administrators on bond of \$25,000.

Estate of Timothy Foley; will admitted to probate and record.

Estate of Virginia Johnson; order granting letters of administration to Sarah E. Trammell on bond of \$800.

Estate of Elizabeth B. Gibbs; will proven and admitted to probate and record.

DEC. 17, 1883.

Estate of William Shoemaker; order authorizing the administrators to sell stock to Joseph K. Rickey.

Estate of Oatherine Magruder; petition of O. M. Matthews filed and order of publication.

Estate of W. H. Craig; inventory of personal estate returned.

Estate of David W. Bailey; order appointing Elizabeth S. Bailey administratrix on bond of \$2,000.

Estate of Joseph K. Blackford; petition for letters testamentary.

DEC. 21, 1883.

In re will of Elizabeth Long; commission issued to H. E. Bartlett, of Baltimore, Md., to take testimony to prove will.

Estate of Ann M. Green; final notice issued appointing Monday, January 21, 1884, for settlement.

Estate of Maria C. Fitzhugh; will admitted to probate and letters testamentary issued to David C. Fitzhugh on special bond of \$5,000.

Estate of Richard D. Cutts; will admitted to probate and letters testamentary issued to Minna J. Cutts on bond of \$65,000.

In re Gilbert D. Fox; order authorizing guardian to pay out \$675 for maintenance of wards since the death of their father.

In re Ezekiah Jackson, late United States Army; petition of Caesar Smith, to be appointed guardian, filed.

Estate of Robert J. Powell; order refusing probate of will.

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business. December 21, 1883.

In the matter of the Estate of John J. Myers, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Mary H. Myers, of Washington City, D. C.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of January, 1884, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.  
MERRICK & MORRIS, Solicitors. 613

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business. December 17, 1883.

In the matter of the Will of Catharine J. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of January, 1884, next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.

Test: 613 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia. Sitting in Equity. December 21, 1883.

ROBERT W. TAYLER

No. 8761. Eq. Dec. 23.

MARY L. TAYLER ET AL.  
It is, this 21st day of December, A. D. 1883, ordered, that the sale of lot five (5), of Simm's Executor's sub-division of square three hundred and thirty-nine, to Rachel W. Tayler, for \$6,400, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 21st day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 21st day of January, A. D. 1884.

By the Court.

CHAS. P. JAMES, Justice, &c.  
True copy. Test: 613 R. J. MEigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia. In Equity.

JOHN R. HERRELL

No. 5666. Eq. Dec. 17.

HENRY W. HERRELL ET AL.

Upon consideration of the report of sale this day filed by the trustee, it is, this 21st day of December, A. D. 1883, ordered, that the sale therein reported by him be finally ratified and confirmed on or after the 21st day of January, A. D. 1884, unless cause be shown to the contrary on or before the last mentioned date. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to the said last mentioned date. The report states that sub-lot 33 and the south one foot (1), of lot 32, in square 99, were sold to Elizabeth R. Shoemaker, for the sum of \$6,035.

By the Court.

CHAS. P. JAMES, Justice.  
A true copy. Test: 613 R. J. MEigs, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CHARLES F. PHELPS ET AL.

No. 3642. Eq. Dec. 23.

HESTER A. TIPPETT ET AL.

Charles F. Rowe and Henry E. Davis, trustees herein, having reported sale of part of lot 10, in square 770, (the same being more fully described in said report) to Frank Virstein, for eleven hundred and fifty (1,150) dollars, it is, this 19th day of December, A. D. 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 9th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court.

CHAS. P. JAMES, Justice.  
A true copy. Test: 613 R. J. MEigs, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George William Thompson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December, 1883.  
 61.3 H. B. MOULTON, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Stephen H. Mirick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1883.  
 ANNA J. G. MIRICK, Executrix.  
 J. J. DARLINGTON, Solicitor. 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of David Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.  
 JAS. L. BARBOUR, Executor.  
 HANNA & JOHNSTON, Solicitors. 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Richard D. Cutts, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1883.  
 61.3 M. J. CUTTS.

**THIS IS TO GIVE NOTICE.**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of William Shoemaker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of December, 1883.  
 JOHN J. JOHNSON,  
 JOHN F. ENNIS,  
 Administrators c. t. a.  
 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Daphne Hungerford, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of September, 1883.  
 HOWARD PIERCE, Executor.  
 E. D. WRIGHT, Solicitor. 61.3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary G. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1883.  
 ROBT. S. CHEW, Administrator.

HANNA & JOHNSON, Solicitors 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph H. Blackfan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of December, 1883.  
 HENRY BEARD, Administrator.

CHAS. H. ARMES, Solicitor. 61.3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 1st day of December, 1883.**

JAMES FOLEY  
 v.  
 JENNIE A. FOLEY. } No. 6335. Equity Docket 22.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Jennie A. Foley, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 61-3 R. J. MORGAN, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 21, 1883.**

In the case of W. W. Wishart, Administrator of Ann M. Green, deceased, the Administrator aforesaid has, with the approval of the court, appointed Monday, the 31st day of January A. D. 1884, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 61.3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 21, 1883.**

In the matter of the Will of John M. Jameson, late of Washington City, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Minnie J. Hunt, of said City and District.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of January, 1884, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDALL, Register of Wills.  
 CARVER & MILLER, Solicitors. 61.3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 19th day of November, 1883.**

**EMMETT O. ADAMS** } No 5785. Eq. Doc. 23.  
v.  
**EPHRAIM S. STODDARD ET AL.**

On motion of the plaintiff, by Mr. Chas. A. Elliot, his solicitor, it is ordered that the defendants, Ephraim S. Stoddard and Charles D. Sturtevant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **A. B. HAGNER, Justice.**  
A true copy. Test: 47-3 **R. J. MEIGS, Clerk**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**FREEDMAN'S SAVINGS & TRUST CO.** } Equity. No. 5,216.  
v.  
**THOMAS BARTON ET AL.**

Upon consideration of the report of James H. Smith, trustee of the sale of real estate described in the proceedings herein, it is this 10th day of December, A. D. 1883, ordered, that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of January, A. D. 1884.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true copy. 50-3 Test: **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity, December 5, 1883.**

**JULIA GREEN** } 8300. Eq. Doc. 22.  
v.  
**ANNIE C. FORSBERG ET AL.**

Fillmore Beall, the trustee in this cause, having reported the sale of the real estate described in this cause, being parts of lots 16 and 17 in square 117, in Washington city, District of Columbia, under decree of this Court:

It is this 5th day of December, A. D. 1883, ordered, that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 5th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said 5th day of January, 1884.

The report states the amount of sales to be \$4,500.  
By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true Copy. Test: 49-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, sitting in Equity, December 11th, 1883.**

**JOHN M. KEATING ET AL.** } No 8661. Eq. Doc. 23.  
v.  
**GEORGE McLAUGHLIN.**

John F. Ennis, trustee, having reported that he sold lot numbered twenty-five (25), subdivision, in square numbered two hundred and six (206), with the improvements thereon, to Emma T. Nelson, for the sum of three thousand and four hundred and fifty (\$4,500) dollars, it is, this 11th day of December, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 20th day of January next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true copy. Test: 50-3 **R. J. MEIGS, Clerk.**

## THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William G. H. Newman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of November, 1883.

**MARY A. NEWMAN,**  
**RAPHAEL C. GWYNN,**  
Executor.

**CHAS. A. ELLIOTT, Solicitor.**

46-3

## Legal Notices.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term.**

**IN RE THE ESTATE OF AMBROSE W. THOMPSON.**

On hearing the petition of Celeste Thompson for Letters Testamentary upon the last Will and Testament of Ambrose W. Thompson, deceased, it is this 14th day of December, A. D. 1883, ordered, that the heirs-at-law of said deceased, and all other parties in interest, show cause, on or before the 14th day of January, 1884, why the prayer of said petition should not be granted.

It is further ordered, that a commission in the usual form issue to \_\_\_\_\_, of New York City, to take proof of said last Will and Testament according to law.

It is further ordered, that Richard W. Thompson and William K. Rogers, two of the executors named in said will, show cause, on or before the date above mentioned, why they do not qualify as executors aforesaid. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. **CHAS. P. JAMES, Justice.**  
Test: 50-3 **H. J. RAMSDELL, Register of Wills.**  
**R. K. ELLIOT, Solicitor.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia,**

**ELIZABETH A. MOORE ET AL.** } Equity. No. 6192.  
v.  
**MARY E. HARRISON ET AL.**

James G. Payne and Edward H. Thomas, trustees, having reported that they have sold part of lot one (1) in square 453, at the corner of 6th and H streets, N. W., to James E. Bullock for \$5,125; part of the same lot in said square next to above described, twenty feet front, to Jacob Miller for \$6,025; part of same lot in same square, being twenty feet front, west of last described part, to Anna S. Barker for \$3,700; lot "D," square 408, to S. Jeanette Stevens and Anna S. Barker for \$17,400; part of lot 7 in square 447 to Christian Heurich, who has assigned the same to August Conrades for \$5,500; part of lot 6 in square 455 to Longham Moore and Mary E. Harrison for \$13,300; part of lot 6 in square 378 to R. H. Goldsborough for \$12,050:

It is by the court, this 13th day of December, 1883, ordered, that the respective sales aforesaid be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of January, 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said last mentioned day.

By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true copy. Test: 50-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Equity Business.**

**CAROLINE A. DAVIS ET AL.** } Equity. No. 5765.  
v.  
**DE VIN FINCKEL ET AL.**

It is this 6th day of December, A. D. 1883, ordered by the Court, that the sale made on the 14th day of November, A. D. 1883, and reported by William H. Finckel, trustee in the above entitled cause, be, and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of January, A. D. 1884. Provided, a copy of this order be inserted in the Washington Law Reporter, a newspaper printed and published in the city of Washington, D. C., once in each of three successive weeks previous to said day.

The report states the amount of sale to be \$1,540 cash.  
By the Court. **CHAS. P. JAMES, Justice, &c.**  
A true Copy. Test: 49-3 **R. J. MEIGS, Clerk.**

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Adam Dade, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

**LOUISA DADE, Executrix.**  
her mark.

**B. T. HANLEY, Solicitor.**

49-3

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

ANTON HEITMULLER

v.

In Equity. No. 7672.

JOHN F. OLMSTEAD ET AL.

George F. Appeby and William E. Edmonston, the trustees in the above entitled cause, having reported to the court that they have sold to James E. Miller, the south 22 feet 8 inches front of lot 4 in square 742, at and for the sum of \$2,725.14; and to the same purchaser the middle 22 feet 8 inches of said lot 4, at and for the sum of \$2,845.27; and to the same purchaser the north 22 feet 8 inches front of said lot 4, at and for the sum of \$2,825.40; and to Charles Heitmuller the north 22 feet 8 inches front of lot 6 in said square, at and for the sum of \$3,477.41; and to Anton Heitmuller the middle 22 feet 8 inches front of said lot 6, at and for the sum of \$3,364.23; the said lots 4 and 6 being of Heitmuller's recorded subdivision of said square:

It is this 4th day of December, 1883, ordered, that the said sales be confirmed, unless cause to the contrary be shown on or before the 4th day of January, 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 4th day of January, 1884.

By the Court.

CHAS. P. JAMES, Justice.

A true Copy.

Test: 49-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia.

FANNY STEPHENS

v.

Equity. No. 5677.

MARY A. PROCTOR ET AL.

Brainerd H. Warner and Charles C. Glover, trustees, having reported that they have sold lot numbered four (4), in W. W. Corcoran's subdivision of original lots two (2) and three (3), in square numbered three hundred and thirty-seven (337), with the improvements thereon to Patrick R. Daly, for the sum of \$1,415. It is, this 24th day of November, A. D. 1883, ordered, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 24th day of January, A. D. 1884. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court.

A. B. HAGNER, Assoc. Justice.

A true copy.

Test: 47-3 R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Swift, late of St. Thomas, Danish West Indies, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of December, 1883.

49-3 JNO. ST. C. BROOKES, Administrator.

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Napoleon Hudlin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

GEORGE C. BROWN, Administrator.  
H. R. ELLIOTT, Solicitor. 49-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of George Gernhardt, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of December, 1883.

49-3 JNO. E. McNALLY, Administrator c. t. a.

## Legal Notices.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 27th day of November, 1883.

MARY ELLA EDWARDS

v.

No. 8804. Eq. Doc. 23.

EDGAR FRANCIS EDWARDS.

Upon hearing the original petition in this cause, the return of the Marshal on the summons, and the affidavit of Mrs. Mary Jones, as to the absence of the defendant from the District of Columbia, it is, by the court this 27th day of November, A. D. 1883, on motion of Elliot & Robinson, solicitors of petitioner, ordered that the defendant, Edgar Francis Edwards, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default; provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said rule-day.

By the Court.

A. B. HAGNER, Assoc. Justice.

A true copy.

Test: 49-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.

WM. CLAUDE BARRETT

v.

No. 8782. Eq. Doc. 23.

MARY E. BROWN ET AL.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, Mary A. Blyer, Sanford Blyer, Oskaloosa F. Slater and John W. Slater and George T. Brown, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A. B. HAGNER, Justice.

A true copy.

Test: 49-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of November, 1883.

WILHELMINA RIESSNER

v.

No. 8,795. Eq. Doc. 23.

ANNA O'HARA ET AL.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendants, Anna O'Hara, Julia Eddy nee O'Hara, Susan O'Hara, Virginia O'Hara and George O'Hara, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

A. B. HAGNER, Justice.

A true copy.

Test: 47-3 R. J. MEIGS, Clerk.

## IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 5th day of December, 1883.

JAMES F. DARTT

v.

No. 8817. Eq. Doc. 23.

CATHERINE DEVEREUX and

JOHN DEVEREUX.

On motion of the plaintiff, by Mr. E. A. Newman, his solicitor, it is ordered that the defendant, John Devereux, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. P. JAMES, Justice.

A true copy.

Test: 49-3 R. J. MEIGS, Clerk.

## THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Robert Payne, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

JACOB H. KENGLA, Administrator c. t. a.  
JOSEPH FORREST, Solicitor. 49-3

## THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Violetta S. Sprigg, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

SAMUEL SPRIGGS, Executor.  
J. J. DARLINGTON, Solicitor. 49-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas Swann, late of Washington, District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of December, 1883.  
**CHARLES SHIRLEY CARTER,**  
**JAMES LOWNDES, Executors.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Craig, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

**HENRY C. CRAIG, Administrator.**  
**WM. D. CASSIN, Solicitor.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jacob Hess, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1883.

**SAM. S. BOND.**  
**S. R. BOND, Solicitor.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, Sarah T. Glover, of Fleckhill, N. Y. and John P. Poe, of Baltimore, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Townsend Glover, late of Baltimore, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of December, 1883.

**SARAH T. GLOVER,**  
**JOHN P. POE.**  
**T. A. LAMBERT, Solicitor.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Albert M. Perrotet, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

**CHARLES O. DUNCANSON, Administrator c. t. a.**  
**J. M. YZNAGA, Solicitor.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Frawley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

**JEREMIAH F. DOWNEY, Administrator.**  
**B. J. DARNELLE, Solicitor.**

50-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John G. Stephenson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1883.

**GEORGE P. ZURHORST, Administrator.**  
**A. K. BROWNE, Solicitor.**

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Offutt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of September, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1881.

**MARY OFFUTT, Executrix.**  
**CHAS. M. MATTHEWS, Solicitor.**

50-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the matter of the Estate of Mary E. Maroney. Application for Letters of Administration on the estate of Mary E. Maroney, late of the District of Columbia, has this day been made by John W. Ross.

All persons interested are hereby notified to appear in this Court on or before the 16th day of January next, at 10 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **CHARLES P. JAMES, Justice.**

Test: **H. J. RAMSDELL, Register of Wills.**  
**ROSS & DEAN, Solicitors.**

50-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the case of T. T. Lane & Michael Daly, Executors of William A. Lane, deceased, the Executors aforesaid has, with the approval of the Court, appointed Friday, the 18th day of January, A.D. 1884, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

50-3 Test: **H. J. RAMSDELL, Register of Wills.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 14th day of December, 1883.**

**JOHN JOHNSON**

**ELIZA H. JOHNSON.**

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Eliza H. Johnson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHARLES P. JAMES, Justice.**

A true copy. Test: 50-3 **R. J. MEIGS, Clerk.**

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 14th day of December, 1883.**

**EMMA J. DAVIS**

**ELIAS DAVIS.**

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Elias Davis, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. **CHAS. P. JAMES, Justice.**

A true copy. Test: 50-3 **R. J. MEIGS, Clerk.**

# Washington Law Reporter

WASHINGTON - - - - - December 29, 1888

GEORGE B. CORKHILL - - - EDITOR

## American Law and Lawyers.

A correspondent of the London *Times*, writing of "American Law and Lawyers," says: "Every American is proud of the Supreme Court of the United States, the 'best court in the world,' one lawyer said to me—worthy to be ranked with the Brooklyn bridge and the American system of checking baggage, which I found to be the accepted tests of human perfection.

"A score of legal institutions dead and buried in England are here alive. Ghosts from Tidd's Practice walk the earth. I have my doubts whether John Doe is extinct in some of the States. If our old serjeants rose from the dead they would find themselves much more at home in the courts of Jersey City than in the Palace of Justice."

He attended the trial of a case in a State court, and gives the following as his impression of the judge:

"The judge, I could see, was of less account, the advocate of more account than in an English court. The former was, indeed, treated with respect. His rulings were accepted, but there was no obsequious eagerness to propitiate him. His demeanor was in some respects novel to me. He took no notes—in fact, there was an official reporter. He rarely interfered with the examination of the 'witness on the stand,' as the witness who did not stand, but sat, is termed. He read the newspapers ostentatiously; opened his letters *coram publico*; walked out of court while the advocates were haranguing; walked in again to see what was going on, and, not being interested, disappeared again for a short time. But the decorum of the audience was admirable. Silence was kept in a way of which I had no experience. The judge's remarks, if few, were very much to the point; and in most respects the trial compared very advantageously with one in our own courts. One could not but be struck, on this occasion,

as on others, by the reticence, tested by English standards, of the judges. They interfere rarely; and I was again and again asked to account for what was irreverently styled the garrulousness of the English Bench. All that I saw of the State judges was favorable. They are badly paid. They are not always men of great culture."

## Supreme Court District of Columbia

REPORTED BY FRANKLIN H. MACKAY.

JOHN H. JOHNSON, Executor, &c.,

vs.

SAMUEL GREGG.

In General Term. AT LAW. No. 5,530.

Decided December 19, 1870.

Where the Statute of Limitations is pleaded in bar, a new promise need not be specially replied, but it may be given in evidence under the general issue.

THE CASE is sufficiently stated in the opinion.

WILLIAMS for plaintiff.

LLOYD & LEAVY for defendant.

Mr. Justice WYLIE delivered the opinion of the court.

This is an action of assumpsit, which was brought on the 11th of February, 1869. A bill of particulars was annexed to the declaration and referred to as the cause of action, consisting of two items only, and stating a balance due on the 11th of September, 1865, of \$212.72, a period of more than three years previous to the commencement of the action.

To this declaration the defendant pleaded both the general issue, and the plea "that the alleged cause of action did not accrue within three years before this suit."

The plaintiff replied by joining issue on the defendant's pleas.

At the trial the plaintiff gave in evidence testimony proving a promise made by the defendant within three years before the bringing of the action, to pay the plaintiff the amount of the claim sued upon. After the evidence had been received without objection from the defendant, the counsel for the defendant asked the court to instruct the jury that the evidence was incompetent and ought to be wholly disregarded, and that their verdict should be for the defendants; but the court rejected this prayer of the defendant's counsel, and the verdict was in favor of the plaintiff for the amount of his claims with interest.

To this ruling of the court defendant ex-

cepted, and entered a motion for a new trial, on which the cause has been brought here on appeal.

The principal authority relied on by the appellant is in the 440th section of 2d Greenleaf's Evidence, where the author says: "Where the statute is pleaded in bar, and the plaintiff would avoid the bar by proof of an acknowledgment of the claim, this can be done only under a special replication of a new promise within the period limited."

In the present instance the only replication was a general joinder in issue by the plaintiff on the defendant's pleas—there was no special replication of a new promise within the period of limitations.

From respect to the high authority of the author of this work, we have examined the proposition just quoted, with special care, and have been forced to the conclusion that it was laid down without the author's usual consideration, and that it is erroneous.

The Statute of Limitations contains certain enumerated exceptions, any of which will exempt a claim from its operation; as that the plaintiff was beyond seas; that the debt or account was between merchants and mutual; or that the plaintiff was a minor, or *non compos mentis*. In either of these instances, if the defendant has pleaded the statute, it is necessary for the plaintiff to reply specially, and aver the existence of the disability which prevented the operation of the statute against his claim. See 2 Saunders on Pl. & Ev., 643.

But an acknowledgment of the debt, or a new promise to pay it, which may take a case out of the statute, is not one of the exceptions provided for in the statute itself; and as to this it need not be pleaded specially in the replication, unless it is in certain excepted cases which have no relation to the one we are now considering.

In 1 Chitty's Pleadings, 582, the author says:

"When the Statute of Limitations has been pleaded, either that the defendant did not undertake, or that the cause of action did not accrue within six years before the 'exhibiting of the plaintiff's bill,' and the plaintiff could prove a promise or acknowledgment within that time, the replication might deny the plea generally, and conclude to the country."

The same doctrine was held by Abbott, C. J., in Beardmore v. Rattenburg, 5 B. & A., 432, and in Upton v. Else, 12 Moore's R., 303 (22 E. C. L., 451). This last was an action of assumpsit on the money counts alone. The plea was the Statute of Limitations, to which there was the general replication. The cause of action declared on was of thirteen

years standing; but at the trial the plaintiff was allowed to give evidence of a new promise made by the defendant within the six years; and, thereupon, Best, C. J., directed the jury to find for the plaintiff. Afterwards, the defendant's counsel moved for a new trial before the whole court, on the ground that the plaintiff was not entitled to recover because his declaration was for the original cause of action, and he had been allowed to prove a different cause of action, namely, the new promise. But the chief justice answered: "We have every wish to give full effect to the statute. Probably, the new promise ought to be declared on specially; but the practice is inveterate the other way, and we cannot get over it."

The true answer, however, as it appears to us, was that given by Mr. Justice Burroughs, who said: "Notwithstanding the bar of the statute, the debt remains; the remedy only is gone."

The following are some of the cases we have examined in which it was held by the court below that evidence of a new promise might be received without having been specially pleaded in the replication, and no question made as to the correctness of the ruling, in this respect, made in the appellate tribunals: Clementson v. Williams, 8 Cr., 72; Wetzell v. Burford, 11 Wheat., 309; Bell v. Morrison, 1 Peters, 362; Moore v. Bank of Columbia, 6 Peters, 86; Bangs v. Hall, 2 Pickering, 368, and Cambridge v. Hobart, 10 Peck, 232.

Gardner v. Tudor, 8 Peck, 206, is a case where the new promise was averred in the replication; but neither there, nor in any other case, have we found an adjudication that this was necessary.

Indeed, such a doctrine would be an anomaly in pleading, for it would permit the plaintiff to set up in his replication a different cause of action from that contained in his declaration, which would amount to a departure.

This is manifest when we compare together the following portions of section 440, 2 Greenleaf Ev., already referred to, and partly quoted:

"Where the statute is pleaded in bar, and the plaintiff would avoid the bar by proof of an acknowledgment of the claim, this can be done only under a special replication of a new promise within the period limited;" and "whenever, therefore, the bar of the statute is sought to be removed by proof of a new promise, the promise, as a new cause of action, ought to be proved in a clear and explicit manner, and be in its terms unequivocal and determinate."



We are of opinion, therefore, that if the new promise be, in fact, a new cause of action, it cannot be set up in the first instance in the replication; and if it be not a new cause of action, but only serves to waive the bar of the statute, it need not be.

There are cases, undoubtedly, where the new promise does amount to the creation of a new cause of action, for which the old debt is a good consideration; and the distinction between these cases and those where the acknowledgment serves only to waive the Statute of Limitations, and leaves the plaintiff's right to recover on the original cause of action, as it was at first, is thus stated by the Supreme Court of the United States in *Wetzell v. Bussard*, 11 Wheat., 309, cited and approved in *Bell v. Morrison*, 1 Peters, 361. The court there say: "An acknowledgment which will revive the original cause of action must be *unqualified and unconditional*. It must show positively that the debt is due in whole or in part.

If it be connected with circumstances which in any manner affect the claims; or, if it be conditional, it may amount to a new assumption, for which the old debt is a sufficient consideration; or, if it be construed to revive the original debt, that revival is conditional, and the performance of the condition, or a readiness to perform it must be shown."

This, however, is a branch of the subject which need not be followed any farther; as the proof, in the present case, was of a new promise, absolute and unqualified, which, therefore, did not amount to a new cause of action, but left the plaintiff to recover on his original claim, as would have been his right had the statute never been passed.

The judgment is therefore affirmed, with costs.

## The Courts.

### U. S. Supreme Court Proceedings.

DEC. 17, 1883.

The following persons were admitted to practice:

B. F. Wilson, of Birmingham, Ala.; J. Noble Hayes, of New York City; C. A. Black, of Waynesburg, Pa.; W. B. Williams, of Lapeer, Mich.; N. Goff, jr., of Clarksburg, W. Va.; John J. Wilkinson, of Philadelphia, Pa.; Charles E. Kremer, of Chicago, Ill.

No. 1006. *J. L. Sullivan et al., plaintiffs in error, v. the Iron Silver Mining Co.* In error to the circuit court of the United States for the district of Colorado. Judgment reversed with costs, and cause remanded with leave to amend pleadings, and for further proceedings not inconsistent with the opinion of this court. Opinion by Mr. Justice Gray.

No. 8. *Original Ex parte.* In the matter of Kan-gu-shun-ca, otherwise known as Crow Dog, petitioner; petition for writs of habeas corpus and certiorari granted. Opinion by Mr. Justice Matthews.

No. 129. *Virginia Young, appellant, v. Andrew B. Duvall et al.* Appeal from the supreme court of the District of Columbia. Decree affirmed with costs. Opinion by Mr. Justice Harlan.

No. 32. *The Providence and New York Steamship Co., plaintiff in error, v. the Hill Manufacturing Co.* In error to the supreme judicial court of the Commonwealth of Massachusetts. Judgment reversed with costs, and cause remanded with instructions for further proceedings in accordance with the opinion of this court. Opinion by Mr. Justice Bradley.

No. 139. *Stanhope Robertson et al., plaintiffs in error, v. Esau Pickrell et al.* In error to the Supreme Court of the District of Columbia. Judgment affirmed with costs. Opinion by Mr. Justice Field.

No. 67. *Mary R. Steever, appellant, v. James N. Rickman.* Appeal from the circuit court of the United States for the district of Kentucky. Decree affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 109. *Arthur W. Sweeney, appellant, v. the United States.* Appeal from the Court of Claims. Judgment affirmed. Opinion by Mr. Chief Justice Waite.

No. 918. *The Board of County Commissioners of the County of Cherokee, Kansas, plaintiffs in error, v. William C. Wilson.* In error to the circuit court of the United States for the district of Kansas. Judgment affirmed with costs. Opinion by Mr. Chief Justice Waite.

No. 919. *Salamanca Township, Cherokee County, Kansas, plaintiff in error, v. William C. Wilson.* In error to the circuit court of the United States for the district of Kansas. Judgment affirmed with costs and interest. Opinion by Mr. Chief Justice Waite.

No. 951. *Henry S. Hale et al., &c., plaintiffs in error, v. Elisha S. Everett.* Motion to dismiss or affirm submitted.

No. 13. *Original ex parte.* In the matter of Julius A. Boyer et al., petitioners. Petition for a writ of prohibition submitted.

No. 14. *Original ex parte.* In the matter of Francis Schrieber et al. Petitioner's motion for rule to show cause why writ of mandamus should not issue submitted.

No. 902. *Richard Francis et al., appellants, v. James M. Flinn.* Motion to advance submitted.

No. 88. *Nathaniel Wilson, administrator, &c., plaintiff in error, v. Josephine C. Arrick, administratrix, &c.* Motion to fix day for argument denied and case continued.

No. 330. *The First National Bank of Omaha, plaintiff in error, v. John J. Redick.* Motion to dismiss submitted.

No. 860. *William Gray, appellant, v. Mary Maple.* Motion to advance submitted.

No. 530. *Joseph B. Holland, plaintiff in error, v. James H. Chambers.* Submitted under thirty-second rule.

No. 50. *H. B. Claflin & Co., plaintiffs in error, v. the Commonwealth Insurance Co. of Boston.*

No. 51. *H. B. Claflin & Co., plaintiffs in error, v. the Western Assurance Co. of Toronto, Canada.*

No. 52. *H. B. Claflin & Co., plaintiffs in error,*



v. the Franklin Insurance Co. of St. Louis, Mo. Printed arguments on question of jurisdiction submitted.

No. 68. Robert and William Mitchell, plaintiffs in error, v. William G. Clark. Argument concluded.

No. 61. Henry Hilton and William Libbey, as A. T. Stewart & Co., plaintiffs in error, v. E. A. Merritt, collector, &c. Argument commenced.

DEC. 18, 1883.

Lew Wallace, of Indianapolis, Ind., and Charles W. Dayton, of New York City, were admitted to practice.

No. 1126. The United States, appellant, v. Frank A. Behan. Submitted under the twentieth rule.

No. 161. Henry Hilton and William Libbey, as A. T. Stewart & Co., plaintiffs in error, v. Edwin A. Merritt, collector, &c. Argument concluded.

No. 183. The Houston & Texas Central Railroad Co., plaintiff in error, v. the United States. In error to the circuit court of the United States for the eastern district of Texas. On motion of Mr. Solicitor-General Phillips, dismissed.

No. 167. The Sioux City & Pacific Railroad Co., plaintiffs in error, v. the United States. Submitted.

No. 162. John Swann, appellant, v. Eben Wright et al., executors, &c. Argument commenced.

DEC. 19, 1883.

Paul Jones, of Nashville, Tenn., and Aretus W. Hatch, of Indianapolis, Ind., were admitted to practice.

No. 194. The Madison & Portage Railroad Co., appellant, v. the North Wisconsin Railroad Co.;

No. 195. The Wisconsin Central Railroad Co., appellant, v. the Madison & Portage Railroad Co.;

No. 196. The North Wisconsin Railroad Co., appellant, v. the Wisconsin Railroad Farm Mortgage Land Co.;

No. 197. The Wisconsin Railroad Farm Mortgage Land Co., appellant, v. the North Wisconsin Railroad Co.

No. 522. The West Wisconsin Railway Co., appellant, v. the North Wisconsin Railway Co. et al. Continued.

No. 1043. Frederick Hopt, plaintiff in error, v. People of Utah Territory. Reassigned for 15th of January next, at the foot of the call after No. 1207.

No. 162. John Swann, appellant, v. Eben Wright et al., executors, &c. Argument concluded.

No. 163. John Swann et al., appellants, v. Thomas Clark et al. Argued.

No. 1125. The United States, appellant, v. James O. Nixon. Appeal from the Court of Claims. Dismissed.

No. 164. George Taylor et al., appellants, v. Elizabeth Bemiss et al., &c.;

No. 165. Elizabeth Bemiss et al., &c., appellants, v. George Taylor et al.;

No. 166. Laura J. Bemiss (otherwise Willis), appellant, v. Elizabeth Bemiss et al., &c. Argument commenced.

DEC. 20, 1883.

The following persons were admitted to practice:

John C. Donnelly and Frederick A. Baker, of Detroit, Mich.; John C. Watson, of Nebraska City, Neb.; Charles W. Ogden, of San Antonio, Texas; A. S. Lathrop, of Dallas, Texas.

No. 1230. The North American Neuchatel Rock Paving Co., appellant, v. the District of Columbia. Appeal from the Court of Claims. Docketed and dismissed.

No. 1231. Same.

Nos. 164, 165 and 166. Argument concluded.

No. 168. Peter Lorillard et al., &c., appellants, v. Eli Ridgeway. Appeal from the circuit court of the United States for the eastern district of Pennsylvania. Dismissed with costs per stipulation.

No. 169. Peter Lorillard et al., &c., appellants, v. Levi Sellers et al., &c. Appeal from the circuit court of the United States for the eastern district of Pennsylvania. Dismissed with costs per stipulation.

No. 173. Alline P. Woodworth, appellant, v. John I. Blair et al. Passed.

No. 175. Isaac N. Jenness, plaintiff in error, v. the Citizens' National Bank of Romeo. Argument commenced by Mr. William B. Williams for the plaintiff in error. The court declined to hear further argument in this cause.

No. 176. George B. Humphrey, appellant, v. Sanford Baker. Appeal from the circuit court of the United States for the eastern district of Michigan. Dismissed with costs.

No. 177. Harrison and Elizabeth Goodwin, plaintiffs in error, v. the Colorado Mortgage and Investment Co. of London (limited). Submitted by Mr. E. T. Wells for the plaintiff in error, no counsel appearing for the defendant in error.

No. 182. John E. Hoff, plaintiff in error, v. the County of Jasper. Argued by Mr. J. S. Botsford for the plaintiff in error, no counsel appearing for the defendant in error.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA GENERAL TERM

DEC. 19, 1883.

Looney v. Quill, and Quill v. Looney. Opinion by Justice Cox, affirming the decree below.

Farley v. Green. Opinion by Justice Hagner on a certified question.

Lord v. O'Donoghue. Opinion by Justice Hagner, affirming decree below.

Moore v. Harrison. On hearing.

DEC. 18, 1883.

Moore v. Harrison. Argued and submitted.

DEC. 19, 1883.

Carter v. District of Columbia. Demurrer sustained, and petition for mandamus dismissed.

Hart v. Gorham. Dismissed on motion of Mr. Mattingly.

Woodruff v. National Shelf & File Co. Argued in part by Gen. Mussey.

Estate of Margaret A. Randall. Argued and submitted.

DEC. 20, 1883.

Butler v. Scott. Argued and submitted.

Buckley v. Buckley. Decree below affirmed.

Woodruff v. National Shelf & File Co. On hearing.

DEC. 21, 1883.

In re George Fry. Habeas corpus. Appeal submitted.

Woodruff v. National Shelf & File Co. On hearing.

DEC. 24, 1883.

Estate of Margaret Randall. Opinion of Justice Cox, affirming the decree below.

Porter v. White. Opinion by Justice Hagner

affirming decree below; Justice Cox dissenting. Appeal prayed.

Moore v. Harrison. Opinion by Justice Hagner, declaring title good.

In re George Fry. Habeas corpus granted, returnable January 7, 1884.

#### EQUITY COURT.—Justice James.

DEC. 15, 1883.

Joseph v. Lewis et al. Pro confesso as to Lewis & Purley made final.

Bomar v. Bomar. Divorce granted.

McKenney v. McKenney. Divorce granted.

Johnson v. Johnson. Appearance of absent defendant ordered.

Davis v. Davis. Same ordered.

Cousins v. Hunter. Semken & Foster allowed to become parties defendant.

Mackall v. Mackall. On hearing.

DEC. 17, 1883.

Riley v. Riley. Cause revived against F. S. Tyler.

Morrison v. James. Reference to the auditor ordered.

Freedman's Savings and Trust Co. v. Brooks. Sale confirmed and distribution ordered.

Rosecrans v. District of Columbia. Leave to amend bill granted.

## The Courts.

#### CIRCUIT COURT.—New Suits at Law.

DEC. 24, 1883.

24967 Talbert & McCauley v. Jno. F. Christmond. Notes, \$171.82. Pliffs atty, W. Wheeler.

DEC. 26, 1883.

24968 The United States ex rel. George Courtney v. James B. Edmonds et al. Mandamus. Pliffs attys, Hine & Thomas.

DEC. 27, 1883.

24969 Newcomb, Olsen & Co. v. Nathan W. Fitzgerald et al. Foreign judgment, \$2,409.80. Pliffs atty, A. A. Lipscomb.

24990 O. Georgie Goldin v. Thomas E. Tune. Certiorari. Defts atty, O. Elliot.

24991 Wm. Mayse & Co. v. H. G. Williams et al. Note, \$200. Pliffs atty, E. H. Thomas.

24992 Story B. Ladd v. William F. Downey. Damages, \$250. Pliffs attys, Worthington & Heald.

DEC. 28, 1883.

24993 Albinus L. Johnson v. The Detroit Mutual Benefit Association. Policy, \$2,150. Pliffs attys, Thompson and Williamson.

#### IN EQUITY.—New Suits.

DEC. 26, 1883.

8841. George E. Strobel v. J. H. Strobel et al. To cancel deeds. Com. sol., W. T. Bailey.

DEC. 28, 1883.

8842. The Home Savings Bank v. Mary A. Bohn et al. Creditors' bill. Com. sol., Hamilton and Elliot.

8843. Marie F. Du Bois v. W. W. Boarman et al. Injunction. Com. sol., W. T. Bailey.

## Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Byron A. Kidder, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of December, 1883.

THOMAS GREER, Executor.

ANSON S. TAYLOR, Solicitor. 62-3

## Legal Notices.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Patrick Hanaphy, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December, 1883.

JAMES BIGGINS, Executor.

ANSON S. TAYLOR, Solicitor. 62-3

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Davis W. Bailey, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December, 1883.

ELIZABETH I. W. BAILEY.

WM. T. S. CURTIS, Solicitor. 62-3

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 20th day of December, 1883.

JOHN GLENN, Trustee

v.

ISAAC N. WINSTON.

On motion of the plaintiff, by Mr. H. W. Garnett, his attorney, it is ordered that the defendant, Isaac N. Winston, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

MAC ARTHUR, Justice.

A true copy. Test: 62-3 R. J. Meigs, Clerk.

#### THIS IS TO GIVE NOTICE.

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Robert Swift, late of St. Thomas, Danish West Indies, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of December, 1883.

60-3 JNO. ST. C. BROOKES, Administrator.

#### THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Napoleon Hudlin, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1883.

GEORGE C. BROWN, Administrator.

H. R. ELLIOTT, Solicitor. 60-3

#### IN THE SUPREME COURT OF THE DISTRICT OF Columbia, the 8th day of December, 1883.

JAMES F. DART

v.

CATHARINE DEVEREUX and

JOHN DEVEREUX.

No. 8817. Eq. Dec 23.

On motion of the plaintiff, by Mr. E. A. Newman, his solicitor, it is ordered that the defendant, John Devereux, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court.

CHAS. F. JAMES, Justice.

A true copy. Test: 61-3 R. J. Meigs, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business, December 21, 1883.

In the matter of the Estate of John J. Myers, late of the District of Columbia, deceased.  
Application for Letters of Administration on the estate of the said deceased has this day been made by Mary H. Myers, of Washington City, D. C.

All persons interested are hereby notified to appear in this court on Friday, the 11th day of January, 1884, next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: H. J. RAMSDELL, Register of Wills.  
MERRICK & MORRIS, Solicitors. 51-3

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term for Orphan's Court  
Business, December 17, 1883.

In the matter of the Will of Catharine J. Magruder, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Charles M. Matthews.

All persons interested are hereby notified to appear in this court on Friday, the 26th day of January, 1884, next, at 11 o'clock a. m., to show cause why said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 51-3 H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia. Sitting in Equity. December 21, 1883.

ROBERT W. TAYLER } No. 8761. Eq. Doc. 23.  
v.  
MARY L. TAYLER ET AL.

It is, this 21st day of December, A. D. 1883, ordered, that the sale of lot five (5), of Simm's Executor's sub-division of square three hundred and thirty-nine, to Rachel W. Tayler, for \$6,400, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 21st day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 21st day of January, A. D. 1884.

By the Court. CHAS. P. JAMES, Justice, &c.  
True copy. Test: 51-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia. In Equity.

JOHN R. HERRELL } No. 5666. Eq. Doc. 17.  
v.  
HENRY W. HERRELL ET AL.

Upon consideration of the report of sale this day filed by the trustee, it is, this 21st day of December, A. D. 1883, ordered, that the sale therein reported by him be finally ratified and confirmed on or after the 21st day of January, A. D. 1884, unless cause be shown to the contrary on or before the last mentioned date. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter prior to the said last mentioned date. The report states that sub-lot 33 and the south one foot (1), of lot 32, in square 99, were sold to Elizabeth R. Shoemaker, for the sum of \$6,035.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 51-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

CHARLES P. PHELPS ET AL. } No. 8642. Eq. Doc. 23.  
v.  
HESTER A. TIPPETT ET AL.

Charles F. Rowe and Henry E. Davis, trustees herein, having reported sale of part of lot 10, in square 770, (the same being more fully described in said report) to Frank Virnstein, for eleven hundred and fifty (1,150) dollars, it is, this 19th day of December, A. D. 1883, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 9th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

By the Court. CHAS. P. JAMES, Justice.  
A true copy. Test: 51-3 R. J. MEIGS, Clerk.

*Legal Notices.***IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia, holding a Special Term.

IN RE THE ESTATE  
OF AMBROSE W. THOMPSON.

On hearing the petition of Celeste Thompson for Letters Testamentary upon the last Will and Testament of Ambrose W. Thompson, deceased, it is this 14th day of December, A. D. 1883, ordered, that the heirs-at-law of said deceased, and all other parties in interest, show cause, on or before the 14th day of January, 1884, why the prayer of said petition should not be granted.

It is further ordered, that a commission in the usual form issue to Charles L. Jones, Notary Public, of New York City, to take proof of said last Will and Testament according to law.

It is further ordered, that Richard W. Thompson and William K. Rogers, two of the executors named in said will, show cause, on or before the date above mentioned, why they do not qualify as executors aforesaid. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

By the Court. CHAS. P. JAMES, Justice.  
Test: 50-3 H. J. RAMSDELL, Register of Wills.  
R. K. ELLIOT, Solicitor.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

ELIZABETH A. MOORE ET AL. } Equity. No. 6192.  
v.  
MARY E. HARRISON ET AL.

James G. Payne and Edward H. Thomas, trustees, having reported that they have sold part of lot one (1) in square 463, at the corner of 6th and H streets, N. W., to James E. Bullock for \$5,125; part of the same lot in said square next to above described, twenty feet front, to Jacob Miller for \$6,025; part of same lot in same square, being twenty feet front, west of last described part, to Anna S. Barker for \$3,700; lot "D," square 408, to S. Jeanette Stevens and Anna S. Barker for \$17,400; part of lot 7 in square 447 to Christian Heurich, who has assigned the same to August Conrades, for \$5,500; part of lot 6 in square 455 to Douglass Moore and Mary E. Harrison for \$13,300; part of lot 6 in square 375 to R. H. Goldsborough for \$12,050:

It is by the court, this 13th day of December, 1883, ordered, that the respective sales aforesaid be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of January, 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks prior to said last mentioned day.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 50-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia.

FREEDMAN'S SAVINGS & TRUST CO. } Equity. No. 5,216.  
v.  
THOMAS BARTON ET AL.

Upon consideration of the report of James H. Smith, trustee of the sale of real estate described in the proceedings herein, it is this 10th day of December, A. D. 1883, ordered, that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of January, A. D. 1884. Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to the said 13th day of January, A. D. 1884.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. 50-3 Test: R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF**  
Columbia. Sitting in Equity, December 11th, 1883.

JOHN M. KEATING ET AL. } No. 8661. Eq. Doc. 23.  
v.  
GEORGE McLAUGHLIN.

John F. Ennis, trustee, having reported that he sold lot numbered twenty-five (25), subdivision, in square numbered two hundred and six (206), with the improvements thereon, to Emma G. Nelson, for the sum of three thousand and four hundred and fifty (\$3,450) dollars, it is, this 11th day of December, 1883, ordered, that the said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 30th day of January next. Provided, a copy of this order be published once a week for three successive weeks before said day in the Washington Law Reporter.

By the Court. CHAS. P. JAMES, Justice, &c.  
A true copy. Test: 50-3 R. J. MEIGS, Clerk.

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George William Thompson, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of December, 1883.  
 61.3 H. B. MOULTON, Administrator.

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Stephen H. Mirick, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1883.

ANNA J. G. MIRICK, Executrix.  
 J. J. DARLINGTON, Solicitor. 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of David Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

JAS. L. BARBOUR, Executor.  
 HANNA & JOHNSTON, Solicitors. 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Richard D. Cutts, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1883.  
 61.3 M. J. CUTTS.

**THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of William Shoemaker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of December, 1883.

JOHN J. JOHNSON,  
 JOHN F. ENNIS,  
 Administrators c. t. a.  
 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Daphne Hungerford, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof to the subscriber, on or before the 19th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of September, 1883.

HOWARD PIERCE, Executor.  
 E. D. WRIGHT, Solicitor. 61.3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Mary G. Harris, late of the District of Columbia, dec'd.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of December, 1883.

ROBT. S. CHEW, Administrator.  
 HANNA & JOHNSON, Solicitors 61.3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph H. Blackfan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1883.

HENRY BEARD, Administrator.  
 CHAS. H. ARMES, Solicitor. 61.3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 1st day of December, 1883.**

JAMES FOLEY  
 v.  
 JENNIE A. FOLEY. } No. 8335. Equity Docket 22.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Jennie A. Foley, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.  
 True copy. Test: 61-3 R. J. MEIGS, Clerk, &c.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 21, 1883.**

In the case of W. W. Wishart, Administrator of Ann M. Green, deceased, the Administrator aforesaid has, with the approval of the court, appointed Monday, the 21st day of January A. D. 1884, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them; Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: 61.3 H. J. RAMSDALL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 21, 1883.**

In the matter of the Will of John M. Jameson, late of Washington City, District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Minnie J. Hunt, of said City and District.

All persons interested are hereby notified to appear in this court on Friday, the 25th day of January, 1884, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: CHAS. P. JAMES, Justice.  
 Test: H. J. RAMSDALL, Register of Wills.  
 CARUSI & MILLER, Solicitors. 61.3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas Swann, late of Washington, District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 16th day of December, 1883.  
CHARLES SHIRLEY CARTER,  
JAMES LOWNDES, Executors.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. Craig, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.  
HENRY O. CRAIG, Administrator.

WM. D. CASSIN, Solicitor. 50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Jacob Hess, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1883.

S. R. BOND, Solicitor.

50-3

**THIS IS TO GIVE NOTICE.**

That the subscribers, Sarah T. Glover, of Fleishkill, N. Y., and John P. Poe, of Baltimore, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Townsend Glover, late of Baltimore, Md., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of December, 1883.

SARAH T. GLOVER,  
JOHN P. POE.

T. A. LAMBERT, Solicitor. 50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of Albert M. Perrotet, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

CHARLES O. DUNCANSON, Administrator c. t. a.

J. M. YZNAGA, Solicitor. 50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John Frawley, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1883.

JEREMIAH F. DOWNEY, Administrator.

B. J. BARNHILL, Solicitor. 50-3

*Legal Notices.***THIS IS TO GIVE NOTICE.**

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of John G. Stephenson, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1883.

GEORGE P. ZURHORST, Administrator.

A. K. BROWNE, Solicitor. 50-3

**THIS IS TO GIVE NOTICE.**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William A. Offutt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of September, 1884, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of September, 1883.

MARY OFFUTT, Executrix.

CHAS. M. MATTHEWS, Solicitor. 50-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the matter of the Estate of Mary E. Maroney. Application for Letters of Administration on the estate of Mary E. Maroney, late of the District of Columbia, has this day been made by John W. Ross.

All persons interested are hereby notified to appear in this Court on or before the 16th day of January next, at 10 o'clock a. m., to show cause why Letters of Administration on the estate of said deceased should not issue as prayed. Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. CHARLES P. JAMES, Justice.

Test: H. J. RAMSDELL, Register of Wills.

ROSS & DEAN, Solicitors. 50-3

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, holding a Special Term for Orphans' Court Business. December 14, 1883.**

In the case of T. T. Lane & Michael Daly, Executors of William A. Lane, deceased, the Executors aforesaid has, with the approval of the Court, appointed Friday, the 18th day of January, A. D. 1884, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

50-3 Test: H. J. RAMSDELL, Register of Wills.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 14th day of December, 1883.**

JOHN JOHNSON

v. ELIZA H. JOHNSON.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Eliza H. Johnson, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHARLES P. JAMES, Justice.

A true copy. Test: 50-3 R. J. MEIGS, Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF Columbia, on the 14th day of December, 1883.**

EMMA J. DAVIS

v. ELIAS DAVIS.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, her solicitor, it is ordered that the defendant, Elias Davis, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

By the Court. CHAS. P. JAMES, Justice.

A true copy. Test: 50-3 R. J. MEIGS, Clerk.

3020 UOS E. L. P. 13.



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